United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2272

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

NO. 74-2272

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

ANTHONY LA VECCHIA, EDWARD BOGAN, HERBERT KURSHENOFF and NICHOLAS ANDRIOTIS,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' JOINT APPENDIX

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DOCKET ENTRIES

THE UNITED STATES

vs.

ANTHONY LA VECCHIA, EDWARD BOGAN, JOHN MC MILLAN, ALBERT SETFORD a/k/a "Spike", ALBERT EVANGELISTA, a/k/a "Alibi", DOMINIC RUSSO, BENJAMIN PANKIEWICZ, PHILLIP MARTINO, HERBERT KURSHENOFF, NICHOLAS ANDRIOTIS.

JUDD, J.

73 CR 305

PROCEEDINGS

3-23-73	Before Costantino, J. - Indictment filed. Bench warrants ordered for defendants ANDRIOTIS, PANKIEWICZ & KURSHENOFF.
3-28-73	Bench Warrants issued as above.
4-10-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (EVANGELISTA & SETFORD).
4-10-73	By JUDD, J. - Writs Issued, ret. 4-19-73 (EVANGELISTA & SETFORD).
4-11-73	Before JUDD, J. - Case called - Defts produced on Bench Warrant-Defts present without counsel-Court directs entry of plea of not guilty on behalf of all three defts.-Defts released on $5,000.00 P.R. Bond-Case adjd. without date for trial.
4-11-73	Bench Warrant retd and filed. (LA VECCHIA, et al), as to H. KURSHENOFF, B. PANKIEWICZ and N. ANDRIOTIS.

4-12-73	Magistrate's files 73 M 526, 527 and 528 inserted into CR file.
4-12-73	Before JUDD, J. - Case called - Deft's RUSSO and MARTINO arraigned and enter plea of not guilty - Both defts released on O.R. - Case adjd to 6/7/73 at 10:00 A.M. for trial.
4-12-73	Notice of Appearance filed. (as to deft MARTINO)
4-16-73	Before JUDD, J. - Case called - Deft. KURSHENOFF present with counsel Barry Krinsky - Order appointed counsel signed and filed. Deft. arraigned & enters a plea of not guilty - case adjd to June 7, 1973 for Trial.
4-16-73	By JUDD, J. - Order apptg. counsel filed (KURSHENOFF).
4-17-73	Notice of Appearance filed (PANKIEWICZ).
4-19-73	Before JUDD, J. - Case called - Defts. La Vecchia, Bogan, Setford and Evangelista present with counsel-All defts arraigned and enter please of not guilty-Bail set at $50,000 as to defts La Vecchia and Bogan-Defts Evangelista and Setford presently serving sentence-Case adjd. to 6-7-73 for trial.
4-19-73	Notices of Appearance filed.
5- 3-73	Notice of Appearance filed (Albert Evangelista).
5-17-73	Writs retd. and filed. Executed. (SETFORD and EVANGELISTA)
5-24-73	Before Judd, J. - Case called - Deft. EVANGELISTA & counsel George Kosefas present - deft. arraigned and enters plea of not guilty - adjd. to June 7, 1973 for Trial.
5-29-73	Notice of Motion filed, re: dismissal of the

Indictment. (DEFT. PANKIEWICZ)

5-30-73 Notice of Motion filed for barring the trial of this Indictment as to deft. SETFORD, etc. or in the alternative granting a severance from the trial of the other defts named. (ret. June 7, 1973)

5-29-73 By JUDD, J. - Order filed that the case against deft JOHN MC MILLAN be severed to facilitate the reassignment of his case for purposes of pleading and sentencing only.

6- 5-73 Notice of Motion filed, ret. June 7, 1973 as to deft EVANGELISTA for dismissal of the indictment, etc.

6- 7-73 Before JUDD, J. - Case called. Adjd. to 6/22/73 for Hearing on Motion to Suppress.

6-15-73 Notice of Motion filed with Memo of Law (LA VECCHIA) for suppressing evidence, etc. - ret. June 22, 1973.

6-22-73 Before Judd, J. - Case called - On motion of Asst. D. De Petristhe Indictment is dismissed as to defts. SETFORD & EVANGELISTA. Case as to deft Mc Millan severed - case to to deft. ANDRIOTIS adjd. to June 29, 1973 at 10:00 a.m. to obtain counsel - case set for Trial 9-24-73 for defts. LA VECCHIA, BOGAN, PANKIEWICZ, KURSHENOFF, RUSSO, MARTINO & ANDRIOTIS.

6-22-73 By JUDD, J. - Order of dismissal filed (SETFORD & EVANGELISTA).

6-22-73 Gov'ts Memo of Law filed.

6-22-73 Before Judd, J. - Case called on defts Motion for suppressing evidence (LA VECCHIA) court reserved decision.

7- 5-73	Before JUDD, J. - Case called - Deft. EBANGELISTA and counsel present. Motion for reduction of sentence - Decision reserved.
8- 7-73	Notice of Readiness for Trial filed.
9- 6-73	Notice of Motion filed re: Discovery and inspection, Bill of Particulars and dismissing the indictment - ret. 9/14/73 (ANDRIOTIS).
9-20-73	Before Judd, J. - On Motion of defendant Pankiewicz, the indictment is dismissed as to deft. PANKIEWICZ.
9-20-73	By Judd, J. - Order of dismissal filed (PANKIEWICZ).
9-19-73	By Judd, J. - Memorandum and Order filed granting Motion for dismissal of the indictment as to deft. PANKIEWICZ.
9-24-73	Before, Judd, J. - Case called - adjd. to Oct. 2, 1973 (hearing).
9-26-73	Before Judd, J. - Case called - deft. P. Martino & counsel Alan Sturm present - deft after being advised of his rights and on his own behalf enters of plea of guilty to count 12 - adjd. without date for sentencing.
10- 1-73	Govt's motion to dismiss the indictment as to Deft. Pankiewicz filed - ret. 10/2/73.
10- 2-73	Before Judd, J. - Case called & adjd. to Nov. 7, 1973 for trial.
10- 5-73	Before JUDD, J. - Case called - Attys for both sides present. Motion for an Order asking the court to reconsider its decision dated 9/19/73, etc. argued - Decision reserved.
10-17-73	By JUDD, J. - Memorandum and Order filed on deft. PANKIEWICZ - reconsideration on motion for dismissing the indictment; It is ordered

	that the motion for reconsideration is denied.
11- 7-73	Before JUDD, J. - Case called - defts. KURSHENOFF & ANDRIOTIS present - all other defts not present-adjd. to Nov. 26, 1973 for status report.
11-16-73	Govt's Notice of appeal from order denying motion for reconsideration of dismissal of indictment against deft. Pankiewicz filed.
11-16-73	Docket entries and duplicate of notice of appeal mailed to Court of Appeals (Govt's appeal).
11-30-74	Before JUDD, J. - Case called - Defts. not present - counsel present - Deft's motion for further adjournment granted - Case adjd. to 1-14-74 for trial (LA VECCHIA, BOGAN, KURSHENOFF AND ANDRIOTIS).
11-30-73	Before JUDD, J. - Case called & adjd. to 2-1-74 (sentencing of deft. PHILLIP MARTINO).
1-14-74	Before JUDD, J. - Case called - Adjd. to 3-4-74 for trial.
2- 1-74	Before JUDD, J. - case called - sentence as to deft. MARTINO adjd. to 2-4-74.
2- 4-74	Before JUDD, J. - case called - sentence adjd. to 2-22-74 (MARTINO).
2- 4-74	By JUDD, J. - Order filed of withdrawal of appeal (Govt.)
2-19-74	By JUDD, J. - Order filed that Ronald Fischetti, Esq. be substituted as counsel for deft. EDWARD BOGAN in place of Edward Block, Esq.
2-22-74	Before JUDD, J. - case called - deft. MARTINO & counsel J. Derrico present - deft. sentenced to imprisonment for one year - execution of sentence is suspended and deft. is placed on probation for 2 yrs. Deft. is fined $500.

2-22-74	Judgment and Order of Probation filed - certified copies to Probation.
3- 4-74	Before JUDD, J. - case called - adjd. to 5-6-74 for trial.
5- 6-74	Before JUDD, J. - Case called - Adjd. to 6-3-74 for status report or trial.
6- 3-74	Before JUDD, J. - Case called - Defts. and counsel present - Adjd. to 6-17-74 at 10:00 A.M.
6-14-74	Before NEAHER, J. - Case called - Deft. Mc MILLAN and counsel Marion Seltzer of Legal Aid present - deft. withdraws his plea of not guilty and after being advised of his rights by the court and on his own behalf enters a plea of guilty to count 12 - Bail cont'd sentence adjd. without date.
6-17-74	Before JUDD, J. - case called - Deft. Dominic RUSSO & counsel present - deft. arraigned and having been advised of his rights by the court and his own behalf enters a plea of guilty to count 12 after withdrawing his plea of not guilty - bail cont. (OR) sentence adjd. without date.
6-17-74	Before JUDD, J. - Case called - defts & counsel present - defts motion to suppress - Hearing continued to June 18, 1974.
6-18-74	Before JUDD, J. - case called - defts & counsels present - hearing resumed - Defts. motion to suppress (seizure) denied; defts motion to suppress (audibility) Decision reserved - Jurors selected and sworn - Trial cont'd to June 19, 1974.
6-19-74	Before JUDD, J. - case called - trial resumed - Trial cont'd to 6-20-74.
6-20-74	By JUDD, J. - Order filed that Mattewan State Hospital produce the psychiatric and medical

	records of John McMillan for the period of March, 1964 through mid-1965 while he was comitted to your institution and it is hereby Ordered that the records be turned over to a U.S. Marshal appearing with this Order. Copies to Marshal.
6-20-74	Before JUDD, J. - case called - defts. & counsels present - Deft. La Vecchia's motion for additional discovery - denied without prejudice to renew - Trial cont'd to June 24, 1974.
6-24-74	Before JUDD, J. - case called - defts. & counsel present Trial resumed - Trial continued to June 25, 1974.
6-25-74	Before JUDD, J. - case called - defts & counsel present - Trial resumed - Defts motion for a mistrial - motions denied - Trial cont'd to June 26, 1974.
6-26-74	Before JUDD, J. - Case called - Defts and counsel present - Trial resumed - Govt rests - Defts' motions to dismiss the indictment argued - All motions except count 9 as to deft La Vecchia denied.- All defts rest - Defts' (illegible) all motions to dismiss - motions denied.- Deft Bogan, Kinsnenoff (sic) and Andriotis sum up - Trial contd to 6-27-74 at 10:00 A.M.
6-27-74	Before JUDD, J. - case called - defts & counsel present - trial resumed - Deft. La Vecchia sums up - Govt. sums up - Judge charges jury - alternates discharged - marshals sworn - Jury retires to deliberate at 4:00 PM - jury suspends for the evening at 4:25 PM - trial cont'd to June 28, 1974.
6-28-74	Stenographer's transcripts dated June 17; 18; 19; 20; 24 and 25 filed.
6-28-74	By JUDD, J. - Order of sustenance filed.

6-28-74	Before JUDD, J. - case called - defts and counsel present - Trial resumed - Jury renders verdict of GUILTY as to deft La Vecchia on cts. 1, 2, 7, 8, and GUILTY as to deft Bogan on cts. 8 and 12; GUILTY as to defts ANDRIOTIS on cts. 11 & 12 and GUILTY as to deft KURSHENOFF on ct. 12. Trial concluded - Bail cont'd as to all defts. - Case adjd. w/o date for sentencing.
6-28-74	Form of verdict filed.
9-13-74	Before JUDD, J. - Case called - Adjd. to 9/20/74 (as to defts E. BOGAN, A. LA VECCHIA and N. ANDRIOTIS) - Defts and counsel present - Mr. Foner's application to be substituted as counsel for deft - Application granted - Notice of Appearance to be filed - Deft's motion to adjourn sentence - Motion granted - Case adjd. to 9/20/74 for sentence.
9-13-74	Before JUDD, J. - Case called - defts. RUSS & KURSHENOFF present with counsels - Deft RUSSO sentenced to imprisonment for 90 days and execution of balance of sentence is suspended and the deft is placed on probation for 15 months. Deft is fined $500 - execution of sentence is stayed to 9-27-74. Deft. Kurshenoff is sentenced to imprisonment for 18 months - to serve 6 months and balance of sentence is suspended and the deft is placed on probation for 12 months. Deft fine $750. Execution of sentence stayed pending appeal. Deft advised of right to appeal. Bail conditions continued.
9-13-74	Judgment & Commitment and Order of Probation filed for defts. KURSHENOFF and RUSSO - certified copies to Marshal and Probation.
9-18-74	Notice of Appearance filed (for deft. N. Andriotis)
9-19-74	Affidavit of Harold Foner filed.
9-20-74	Before Judd, J. - case called - deft Andriotis & counsel Harold Foner present - Defts motion

& counsel Harold Foner present - defts motion for 3 week adjournment argued and motion granted. Case adjd. to Oct. 10, 1974 for sentence.

9-20-74 Before Judd, J. - case called - deft La Vecchia present - counsel R. Fischetti not present - adjd. to 9-26-74 for sentence.

9-20-74 Before Judd, J. - case called - Deft. Bogan & counsel present - deft sentenced to imprisonment for a period of four years to run concurrently on counts 8 and 12 with eligibility for parole after one year pursuant to 18:4208(a)(1). Execution of sentence stayed pending appeal. Deft. advised of right to appeal. Bail conditions continued.

9-20-74 Judgment & Commitment filed - certified copies to Marshal (Bogan).

9-20-74 Notice of motion for an order reducing sentence of deft. Russo filed (RUSSO)

9-20-74 Notice of appeal filed (KURSHENOFF)

9-20-74 Docket entries and duplicate of notice of appeal mailed to court of appeals (KURSHENOFF).

9-24-74 Notice of appeal filed (BOGAN).

9-24-74 Docket entries and duplicate of notice of appeal mailed to c of a (BOGAN).

9-26-74 Before JUDD, J. - Case called - Deft. and counsel present - Deft sentenced to imprisonment for 4 years pursuant to T-18 USC Sec. 4208(a)(1) with eligibility for parole after 1 year. Deft. fined $5,000.00. Sentence and fine to run concurrent on cts. 1, 2, 7, 8 and 12. Execution of sentence stayed pending appeal. Deft. advised of right to appeal - Bail conditions cont'd pending appeal.

9-26-74	Judgment and Commitment filed. Certified copies to Marshal (La Vecchia).
9-30-74	Notice of appeal filed (LA VECCHIA).
9-30-74	Docket entries and duplicate of notice of appeal mailed to court of appeals (LA VECCHIA).
9-27-74	Before JUDD, J. - Case called - Deft. and counsel present - Motion for reduction of bail argued - motion granted - Deft sentenced to imprisonment for a period of 18 months - Deft to serve 30 days on 10 consecutive 3 day weekends - execution of balance of sentence is suspended and the deft. is placed on probation for 17 months - Deft. fined $500.00 (RUSSO)
9-27-74	By JUDD, J. - Amended Judgment and Commitment filed - certified copies to Probation and Marshal (RUSSO).
10- 4-74	Record on appeal certified and mailed to court of appeals (LA VECCHIA)

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-against-

ANTHONY LA VECCHIA, EDWARD BOGAN, JOHN McMILLAN, ALBERT SETFORD, a/k/a "Spike", ALBERT EVANGELISTA, a/k/a "Alibi", DOMINIC RUSSO, BENJAMIN PANKIEWICZ, PHILLIP MARTINO, HERBERT KURSHENOFF, NICHOLAS ANDRIOTIS,

73 CR 305

Defendants.
----------X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of July, 1971, within the Eastern District of New York, the defendant ANTHONY LA VECCHIA, with intent to defraud, did keep in his possession and conceal approximately Thirty Thousand (30,000) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited. (Title 18, United States Code, §472 and §2.)

COUNT TWO

On or about the 1st day of July, 1971, within the Eastern District of New York, the defendant ANTHONY LA VECCHIA, did transfer, deliver and sell approximately Thirty Thousand (30,000) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT THREE

On or about early July, 1971, within the Eastern District of New York, the defendant ALBERT EVANGELISTA, also known as "Alibi" did buy and receive approximately Eight Thousand Five Hundred (8,500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT FOUR

On or about early July, 1971, within the Eastern District of New York, the defendant ALBERT EVANGELISTA, also

known as "Alibi", with intent to defraud, did keep in his possession and conceal approximately Eight Thousand, Five Hundred (8,500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited. (Title 18, United States Code, §472 and §2.)

COUNT FIVE

On or about the 14th day of July, 1971, within the Eastern District of New York, the defendants ALBERT EVANGELISTA also known as "Alibi" and Albert Setford also known as "Spike" did buy and receive approximately Sixteen Thousand Five Hundred (16,500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT SIX

On or about the 14th day of July, 1971, within the Eastern District of New York, the defendants ALBERT EVANGELISTA also known as "Alibi" and ALBERT SETFORD, also known as "Spike" with intent to defraud, did keep in his possession and conceal approximately Sixteen Thousand Five Hundred (16,500)

false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited. (Title 18, United States Code, §472 and §2).

COUNT SEVEN

On or about early June, 1972, within the Eastern District of New York, the defendant ANTHONY LA VECCHIA did transfer and deliver approximately Two Thousand Five Hundred (2,500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT EIGHT

On or about the middle of June, 1972, within the Eastern District of New York, the defendants ANTHONY LA VECCHIA and EDWARD BOGAN did transfer and deliver approximately Two Thousand Five Hundred (2,500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title

18, United States Code, §473 and §2.)

COUNT NINE

On or about late June, 1972, within the Eastern District of New York, the defendant ANTHONY LA VECCHIA did transfer and deliver approximately Ten Thousand (10,000) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT TEN

On or about the 5th day of August, 1972, within the Eastern District of New York, the defendant BENJAMIN PANKIEWICZ did transfer and deliver approximately Five Hundred (500) false, forged and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT ELEVEN

On or about late August, 1972, within the Eastern District of New York, the defendant NICHOLAS ANDRIOTIS did buy and receive approximately One Thousand (1,000) false, forged

and counterfeited Ten Dollar ($10.00) Federal Reserve Notes, knwoing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §473 and §2.)

COUNT TWELVE

On or about and between June, 1971 and February 15, 1973, both dates being approximate and inclusive, the defendants ANTHONY LA VECCHIA, EDWARD BOGAN, JOHN Mc MILLAN, ALBERT SETFORD, a/k/a "Spike", ALBERT EVANGELISTA a/k/a "Alibi", DOMINIC RUSSO, BENJAMIN PANKIEWICZ, PHILLIP MARTINO, HERBERT KURSHENOFF, NICHOLAS ANDRIOTIS, together with Thomas Marra, herein named as a co-conspirator but not as a defendant did knowingly and wilfully conspired to commit an offense against the United States in violation of Title 18, United States Code, §§472 and 473, by conspiring with intent to defraud to possess, conceal, buy, receive, transfer and deliver substantial quantities of counterfeit Ten Dollar ($10.00) Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited and intending them to be passed, published and used as true and genuine. (Title 18, United States Code, §371.)

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the

defendants ANTHONY LA VECCHIA, EDWARD BOGAN, JOHN MC MILLAN, ALBERT SETFORD, a/k/a "Spike", ALBERT EVANGELISTA, a/k/a "Alibi", DOMINIC RUSSO, BENJAMIN PANKIEWICZ, PHILLIP MARTINO, HERBERT KURSHENOFF, NICHOLAS ANDRIOTIS committing the following:

O V E R T A C T S

1. The Grand Jury repeats and realleges the acts contained in Counts One through Eleven.

2. On or about July 1,1971, within the Eastern District of New York, the defendant ANTHONY LA VECCHIA had a meeting with the defendant JOHN MC MILLAN.

3. On or about July 14, 1971, within the Eastern District of New York, the defendant JOHN MC MILLAN had a meeting with the defendants ALBERT EVANGELISTA, a/k/a "Alibi", and ALBERT SETFORD, a/k/a "Spike".

4. On or about late August, 1972, the defendant DOMINIC RUSSO had a meeting with the defendant NICHOLAS ANDRIOTIS.

5. On or about August 5, 1972, within the Eastern District of New York, the defendant BENJAMIN PANKIEWICZ had a meeting with Thomas Marra.

6. On or about the middle of June, 1972, the defendant DOMINIC RUSSO had a meeting with defendant HERBERT KURSHENOFF.

A TRUE BILL

_____

FOREMAN

_____

UNITED STATES ATTORNEY

SEARCH WARRANT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

In the Matter of an Application by the United States of America for a Warrant to Search the Premises known as Beacon Discount Sales and Beacon Printing located in the Southeast Section of the Second Floor of a 15 story building at 270 Lafayette Street, New York, New York.	)))))))	Magistrate's Docket No. 73 Case No. 300

To: HON. MARTIN D. JACOBS, U.S. Magistrate, U.S. Court House, Foley Square, New York, N.Y. 10007

Affidavit having been made before me by THOMAS J. TULLY, Special Agent, U.S. Secret Service, that he has reason to believe that on the premises known as Beacon Discount Sales and Beacon Printing located in the Southeast Section of the Second Floor of a 15 story building at 270 Lafayette Street, New York, New York, in the Southern District of New York, there is now being concealed certain property, namely counterfeit Federal Reserve notes, United States Postage Stamps and plates, negatives and other paraphrenalia (sic) for the making of such counterfeit notes and stamps which are designed or intended for use and or have been used as the means of committing a

criminal offense, to wit, violations of Title 18, United States Code, Sections 471, 472, 473, 474, 476 and 477, and I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

YOU ARE HEREBY COMMANDED to search forthwith the place named for the property specified, serving this warrant and making the search at any time in the day or night and if the property be found there to seize it, leaving a copy of this warrant and a receipt of the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 15 day of February, 1973

/s/ Martin D. Jacobs
MARTIN D. JACOBS
U.S. Magistrate

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

In the Matter of an Application by the United States of America for a Warrant to Search the Premises known as Beacon Discount Sales and Beacon Printing located in the Southeast Section of the Second Floor of a 15 story building at 270 Lafayette Street, New York, New York.	Magistrate's Docket No. 73 Case No. 215

BEFORE HON. MARTIN D. JACOBS, U.S. Magistrate, U.S. Cthse., Foley Sq., N.Y.C.

The undersigned, being duly sworn, deposes and says:

That he has reason to believe that on the premises known as Beacon Discount Sales and Beacon Printing located in the Southeast Section of the Second Floor of a 15 story building at 270 Lafayette Street, New York, New York, in the Southern District of New York, there is now being concealed certain property, namely counterfeit Federal Reserve notes, United States Postage Stamps and plates, negatives and other paraphrenalia (sic) for the making of such counterfeit notes and stamps which are designed or intended for use and/or have been used as the means of committing a criminal offense, to wit, violations of Title 18, United States Code, Sections 471, 472, 473,

474, 476 and 477.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

I am Special Agent THOMAS J. TULLY, United States Secret Service, 90 Church Street, New York City. I have conducted or supervised the investigation of one Anthony La Vecchia concerning the distribution of $10 counterfeit Federal Reserve notes. On January 12, 1973 I participated in the arrest one John Mc Millan and assisted in the taking of a statement from him. Mc Millan admitted that over a period from August, 1971 through September, 1972, he had obtained from Anthony La Vecchia approximately $500,000 face value in counterfeit $10 Federal Reserve notes. That he had paid Anthony La Vecchia between 8 1/2 and 9 percent of the face value for these counterfeits; that this amount of counterfeit was purchased from La Vecchia in varying amounts between $25,000 and $300,000 face value of the counterfeit; that on several occasions he went to La Vecchia's residence at 161 Bay 31st Street, Brooklyn, New York and obtained the counterfeits from La Vecchia in that neighborhood. That on one occasion in June or July, 1972 he was present in La Vecchia's residence on Bay 31st Street, and

observed a white male of average size make the delivery of $25,000 in counterfeit $10 notes to La Vecchia which La Vecchia immediately transferred to him, Mc Millan; he noted at that time the distinctive accent and timber (sic) of the voice of the person making the delivery.

/s/ Thomas J. Tully
THOMAS J. TULLY
Special Agent, U.S. Secret Service

Sworn to before me, and subscribed in my presence, February 15, 1973.

MARTIN D. JACOBS
United States Magistrate

THE CLERK: Criminal cause for status report or trial, United States against Anthony LaVecchia, Edward Bogin, Herbert Kurschenoff, Nicholas Andriotis.

MR. DE PETRIS: Good morning, your Honor.

THE COURT: Mr. Bergman was here last.

MR. DE PETRIS: Yes, your Honor. This is my case.

THE COURT: Mr. LaRossa, do you represent Mr. LaVecchia?

MR. LA ROSSA: Yes.

THE COURT: Mr. Fischetti?

MR. FISCHETTI: Mr. Bogin.

THE COURT: Mr. Krinsky?

MR. KRINSKY: Yes.

THE COURT: Where is Mr. Sparrow?

MR. LA ROSSA: He is not here.

THE COURT: Have a United States Marshal go out and bring Mr. Sparrow in.

MR. DE PETRIS: His name is Sydney Sparrow.

THE COURT: Mr. Andriotis, do you know where Mr. Sparrow is?

THE DEFENDANT ANDRIOTIS: He left already, he should be here.

THE CLERK: A marshal will be coming up here, your Honor.

THE COURT: Now, one preliminary question I guess, I want to be sure now there is no conflict between Mr. LaVecchia and Mr. Bogin. Mr. LaRossa, you and Mr. Fischetti are partners?

MR. LA ROSSA: Yes. We will have that waiver on the record. They are both aware of the fact that we are partners, aware of the rights that they would have to two independent lawyers and have chosen not to --

THE COURT: Suppose they come forward so I can talk to them.

You are Mr. LaVecchia and you are Mr. Bogin.

MR. DE PETRIS: Before you begin, I should mention some of the pieces of evidence that might cause a conflict.

THE COURT: Yes, because the indictment charges in count one that Mr. LaVecchia had counterfeit notes in his possession and transferred them --

MR. LA ROSSA: Mr. Sparrow is present, your Honor.

THE COURT: In count seven Mr. La Vecchia transferred about 2500 forged notes, in count eight that Mr. LaVecchia and Mr. Bogin together transferred 2500 notes. Is that a different 2500?

MR. DE PETRIS: Yes.

THE COURT: One is early June and the other is middle June.

In count nine, Mr. LaVecchia transferred counterfeit notes, and in count one that they all conspired to possess notes, possess substantial unindentified quantities. And the overt act included additional meetings between Mr. LaVecchia and Mr. McMillan in July of 1971.

Now, Mr. MacMillan has pleaded guilty. Another defendant was sentenced in an earlier indictment --

MR. DE PETRIS: The same with respect to Mr. Seafort.

THE COURT: Mr. Pankowitz was found not guilty on another indictment. I have dismissed this indictment against him.

What is your testimony going to be with respect to Mr. LaVecchia and Mr. Bogin that may --

MR. DE PETRIS: Let me outline some of the evidence I have.

THE COURT: Mr. Sparrow is here. Cancel the bench warrant. This is not the first time you failed to appear. I believe you should have an obligation to your client and to the Court --

MR. SPARROW: I do have, your Honor. This has been an unbelievable morning, we had an accident

on the Interborough Parkway and tied up everything for forty minutes.

THE COURT: We will proceed.

MR. DE PETRIS: With respect to Mr. Bogin, there will be testimony concerning fingerprints found on counterfeit money, on plates, and negatives and various other paraphernalia used to manufacture counterfeit money. Mr. Bogin when he was represented by another counsel, Mr. Block -- Mr. Bogin and his attorney met in the Southern District of New York and met with an agent and a United States Attorney, Mr. Littlefield, at which time, Mr. Bogin made a statement implicating himself as well as Mr. LaVecchia.

THE COURT: Can that be redacted in a joint trial so it does not implicate Mr. LaVecchia?

MR. DE PETRIS: The Government doesn't intend to intend to use the statement in its direct case.

THE COURT: I see.

MR. DE PETRIS: If he testifies here, of course Mr. Bogin will be subject to cross-examination by Mr. LaVecchia's counsel.

THE COURT: Yes.

MR. DE PETRIS: The evidence in essence will indicate that Mr. Bogin was the printer of the counterfeit money and Mr. LaVecchia was the controller of the

currency once it was printed although Mr. Bogin did in fact distribute a quantity of it.

THE COURT: Now, are any of the co-defendants going to testify one of these defendants and not another?

MR. DE PETRIS: No. The co-defendants who will be testifying will be testifying against both although the majority of the testimony will be against one and not the other.

THE COURT: Does that mean that one co-defendant will testify more about Mr. Bogin and the other Mr. LaVecchia?

MR. DE PETRIS: No, the co-defendants' testimony will not concern Mr. Bogin but Mr. LaVecchia and although give some testimony concerning Mr. Bogin.

THE COURT: Are there any -- you referred to fingerprints, are there any statements by either defendant that would be used here?

MR. DE PETRIS: That will be used in the Government's direct case?

THE COURT: Yes.

MR. DE PETRIS: No. Post arrest statements you are referring to?

THE COURT: Yes.

Mr. LaRossa, have you had as much discovery as

you are entitled to in the case?

MR. LA ROSSA: As we are entitled to? Well, there are some items that Mr. DePetris and I have discussed and he is willing to give but we have not received it yet because they are unable to him. We anticipate them in the form Brady material.

Mr. DePetris has disclosed to us and is in the process of getting it.

THE COURT: Well, apart from the special requirements of DeBerry, Brady material is not normally required until trial starts unless it is very definitely exculpatory.

The last Court of Appeals decision was on a failure of -- no, on an identification of a different defendant by the Government witnesses. Do you have anything of that sort?

MR. DE PETRIS: No, your Honor. Mr. LaRossa and I have discussed many of the items. I suppose the item Mr. LaRossa is specifically referring to is the criminal records of Government witnesses and their is a psychiatric report with respect to one of the Government witnesses.

MR. LA ROSSA: That is basically what I am referring to. Is your Honor's query to me for me to determine --

THE COURT: Whether you are satisfied that you know everything that is in the case that would effect the limitations on your cross-examination of Government witnesses because of information that you found.

MR. LA ROSSA: For the purpose of conflict you are referring to?

THE COURT: Yes.

MR. LA ROSSA: I have found nothing, not only in the discovery given to us by the Government, but in my own investigation that indicates a conflict between the two defendants.

I might also add that Mr. LaVecchia has been informed of his rights to have counsel not a participant in my firm, I have explained the distinction, and Mr. LaVecchia wants me to handle his defense and has no objection to Mr. Fischetti representing Mr. Bogin.

THE COURT: Mr. Fischetti appeared for you on April 19, 1972 on behalf of Mr. LaVecchia. So you have had some joint participation.

MR. LA ROSSA: That is correct, your Honor.

THE COURT: It is possible that Mr. Fischetti has discovered some facts that might be embarrassing to Mr. Bogin and might be embarrassing to Mr. LaVecchia if Mr. LaVecchia testifies. And Mr. Fischetti might

want to cross-examine on behalf of Mr. Bogin. Mr. Block appeared at that time for Mr. Bogin. Mr. Fischetti appeared again for Mr. LaVecchia in June of 1972, when Mr. Bogin was represented by Mr. Father. I think from Mr. Block's office, is that right?

And then Mr. Chargell, I think he was, from your office --

MR. LA ROSSA: He still is.

THE COURT: Appeared on June 22, 1973 representing Mr. LaVecchia.

MR. LA ROSSA: It sounds like everybody but me.

THE COURT: Mr. Block represented Mr. Bogin. Mr. Fischetti was here September 24, '73, again for Mr. LaVecchia. Again, August, '73, Mr. Fischetti was here for Mr. LaVecchia and Mr. Block for Mr. Bogin. And November, '73, Mr. Fischetti was here for both Mr. LaVecchia and Mr. Bogin. And again in January of '74. Again in March of '74. I think your first appearance was June 3, 1974, when I just completed the harness race trial. At that time we talked about a trial date. I think Mr. Sparrow was engaged in a murder trial and was unable to be here at that time.

Today is really the first time you and Mr. Fischetti both are here with your two clients.

Mr. LaVecchia, you have a right to say that Mr. Bogin can't be represented by Mr. Fischetti in the light of the fact that you may have disclosed confidential information to Mr. Fischetti and that Mr. Fischetti and Mr. LaRossa are partners.

Do have any objection to Mr. LaRossa representing you today?

MR. LA VECCHIA: No.

THE COURT: Do you have any objection to Mr. Fischetti representing Mr. Bogin?

MR. LA VECCHIA: No sir, your Honor.

THE COURT: You heard Mr. DePetris say this morning that some of the Government witnesses may have testimony that relates more to you than to Mr. Bogin and that may mean there is some prejudice to you in having Mr. Fischetti represent Mr. Bogin rather than you. Are you at all concerned about that?

MR. LA VECCHIA: No, your Honor.

THE COURT: And Mr. Bogin, you have a right to see that you are represented by somebody who has no connection with Mr. LaRossa because you are a separate defendant. You each have a right to separate and independent counsel.

Have you any objection to Mr. Fischetti representing you?

MR. BOGIN: No.

THE COURT: Have you any objection Mr. LaRossa representing Mr. LaVecchai today?

MR. BOGIN: No sir.

THE COURT: Mr. Fischetti, do you know of anything that would make it difficult for you to be solely devoted to Mr. Bogin's interest at this time?

MR. FISCHETTI: I do not.

THE COURT: Mr. LaRossa, do you know of anything that would make it improper or difficult for you two partners to represent these two defendants independently, separately, and vigorously?

MR. LA ROSSA: No sir.

Frankly, we examined the problem before this morning. I think your Honor knows we wouldn't do it without having investigated it first.

THE COURT: I have confidence in your being conscientious, but I may still face the problem of sum different counsel turning up on appeal if there is one and saying that I did not make a sufficient indepth inquiry into the possibility of a conflict.

MR. LA ROSSA: Yes sir, I understand.

THE COURT: One of the problems is whether either defendant should testify and whether the fact two partners represent separate defendants might have

some qualms about taking different attitudes with that.

MR. LA ROSSA: We have discussed that between the two of us and we found no reason for that to be a problem.

THE COURT: You will be able to make your independent judgement as to Mr. LaVecchia testifying?

MR. LA ROSSA: Yes.

THE COURT: Mr. Fischetti?

MR. FISCHETTI: Yes.

THE COURT: You are certain you can make an independent judgement as to whether Mr. Bogin can testify?

MR. FISCHETTI: I can.

THE COURT: Are you going to be under any difficulty in reaching a decision with respect to Mr. Bogin that may be different from what Mr. LaRossa does with respect to Mr. LaVecchia?

MR. FISCHETTI: No problem.

THE COURT: All right. My function now is not to approve the representation but to determine whether in the interest of justice it indicates there is going to be such a conflict to result in a mistrial or the necessity of a severance. I don't find any reason to deny Mr. LaVecchia and Mr. Bogin the right to be represented by counsel of their choice in a joint trial.

MR. LA ROSSA: Thank you.

MR. DE PETRIS: I don't know whether your Honor got a specific waiver from Mr. LaVecchia and Mr. Bogin as to any possible difficulty or conflict which they might be aware of at this point.

MR. LA ROSSA: I think they both said so.

THE COURT: Mr. LaVecchia, do you waive any right that you have to require that Mr. Bogin be represented by different counsel?

MR. LA VECCHIA: Yes, I waive.

THE COURT: And Mr. Bogin, do you waive any rights?

MR. BOGIN: Yes.

THE COURT: Now, Mr. Krinsky, are you ready?

MR. KRINSKY: Yes.

THE COURT: Mr. Sparrow?

MR. SPARROW: Yes.

THE COURT: Do we have suppression motions that must be heard?

MR. LA ROSSA: We have some preliminary matters that your Honor must take care of.

THE COURT: I understand that Judge Stewart in the Southern District has denied a suppression motion which may relate to some of the same testimony coming in here.

MR. LA ROSSA: That is true.

THE COURT: What is the status of the trial over the status of the trial over there?

MR. DE PETRIS: I believe it is set for trial at some point in July.

MR. LA ROSSA: July 22nd.

THE COURT: I suppose if that should result in an acquittal and this should result in a conviction there would be some way to review Judge Stewart's suppression motion on this conviction.

MR. FISCHETTI: I think your Honor has to hear it. I don't see that as the law of the case.

THE COURT: I don't want to hear the same testimony he heard.

MR. LA ROSSA: There wasn't any testimony. There is no factual basis for the suppression hearing. There was no evidence before Judge Stewart, it was done on memorandum and with him reviewing the warrant and order.

THE COURT: Maybe I can receive the same documents he received.

MR. LA ROSSA: I don't see why not.

MR. FISCHETTI: There is one other issue I should call to the Court's attention, subsequent to the denial of the suppression motion we asked for a

rehearing on a finding of fa[illegible]ermine whether the agent's affidavit was in[illegible] and perhaps untrue as well. And we wrote to Judge Stewart on that and I don't know what happened to it but I believe he refused to reopen it. For that small point quite possibly your Honor might hear very brief testimony. There was no testimony before Judge Stewart.

MR. LA ROSSA: This is a fact that came to our attention subsequent to the argument of the motion which we contend is a false statement in the affidavit submitted to the Court.

THE COURT: Well, it almost has to be deliberate to affect the warrant.

MR. LA ROSSA: Yes.

MR. DE PETRIS: I could have the agent who was -- who made the affidavit for the search warrant here if your Honor would care to hear him. I am not sure I am aware --

MR. LA ROSSA: I would be happy to expose what the matter is. One of the allegations in the affidavit in support of the warrant is that the agent checked with Dun and Bradstreet to determine the relationship between Mr. Bogin and Mr. LeVecchia. And their business relationship was exposed in the affidavit and their relationship with respect to the

premises that was searched. We determined from Dun and Bradstreet that there was no information by obtaining a Dun and Bradstreet report, and a copy of the report was submitted to Judge Stewart. And we have copies to submit to you as well. We contend that the Government could not have obtained this information, the Dun and Bradstreet report, and it was material. It is deliberateness, and it could be determined by asking the agent who submitted the affidavit the questions and we have not had that opportunity.

In addition to that we have audibility questions to determine with respect to the tapes that the Government has taken, allegedly were taken in this case, and I suggest they are going to introduce these to the Jury. There are questions with respect to that that we are going to ask your Honor to decide.

MR. FISCHETTI: With respect to audibility.

THE COURT: Did Judge Stewart hear the tapes?

MR. LA ROSSA: No, the only thing Judge Stewart heard was the motion to suppress -- aside from discovery motions.

THE COURT: How many tapes are there and how long are they?

MR. DE PETRIS: Two tape recordings, one

February 13, and one February 15, 1973. I believe the length of each maybe an hour or perhaps a little more. The Government does not intend to introduce the entire tape.

THE COURT: Do you have a transcript of the entire tape?

MR. DE PETRIS: No, a portion of the tapes.

THE COURT: Have the defendants had a chance to hear the tapes?

MR. DE PETRIS: I believe they heard the tapes in the Southern District.

MR. FISCHETTI: That is not correct. Mr. DePetris is not aware of it, we heard one tape in the Southern District and were supplied with a transcript of that tape which Mr. DePetris told me is incorrect and we are going to get a new transcript of that one tape. The second tape I have absolutely no knowledge of. The second tape I have not heard nor do I have a transcript of. One tape I did hear.

MR. DE PETRIS: If your Honor has an additional calendar, I can alleviate some of the problems. There were transcripts being prepared over the weekend.

THE COURT: Is there a full transcript of the first tape?

MR. DE PETRIS: No, a portion of it.

MR. FISCHETTI: Of the first tape?

MR. DE PETRIS: The tape that you have not heard.

MR. FISCHETTI: There is a completed transcript of one, I believe.

THE COURT: I was told Friday it was contemplated we might not pick a Jury until tomorrow.

MR. LA ROSSA: I don't see how we can.

THE COURT: I can pick a Jury while we have a full panel here and excuse them without hearing tapes.

MR. DE PETRIS: Without swearing them?

MR. LA ROSSA: If your Honor grants any of the motions you going to preclude the Government. I hate to have your Honor in a position where --

THE COURT: Yes, I suppose I should not prejudge anything.

MR. FISCHETTI: I might say, with the first tape -- I only heard one tape -- there is a serious audibility question that your Honor will have to give some attention to.

The second tape, from what Mr. De Petris tells me, is worse than the first.

MR. LA ROSSA: I think there are a lot of housekeeping duties, and without trying to kill a day, because no one wants to do that, but I think we are

going to be kept busy for most of the day so we can go ahead tomorrow morning.

THE COURT: You are going to use part of the second tape as well as the first?

MR. DE PETRIS: I intend to use portions of both tapes. I think there are three pages of transcripts that have been taken and I intend to use it. There is a total of a page of transcript as far as the first tape is concerned that we have not heard.

THE COURT: I think I have to hear the whole tape to determine whether there are other parts that they need.

MR. LA ROSSA: In addition to that, you have other suppression matter that is going to require testimony.

THE COURT: You mean beyond the search warrant?

MR. LA ROSSA: A seizure at the time of the arrest from the automobile of money.

MR. DE PETRIS: Genuine currency.

THE COURT: What are the circumstances with respect to that?

MR. DE PETRIS: There was $2450 seized from the trunk of Mr. LaVecchia's car. That was marked money.

THE COURT: Was he arrested in the car?

MR. DE PETRIS: No, he was arrested inside

125 East 18th Street. The car was in the vicinity of East 18th Street. That is the location of one of the officers of --

THE COURT: What is the basis for having it seized?

MR. DE PETRIS: It was subject to the seizure --

THE COURT: Was there counterfeit money in the car or was it used to transport counterfeit money?

MR. DE PETRIS: There is going to be a question as to that.

MR. LA ROSSA: A serious question.

THE COURT: Do I have to go into all that on the suppression hearing?

MR. DE PETRIS: I am going to need a few minutes to talk to my agent about that issue, your Honor. I understand your Honor has --

THE COURT: I think I will adjourn this until 11:30 and see what problems can be solved.

MR. LA ROSSA: They never seized this car they are talking about. The purpose of searching the car was for seizure and they never seized it. They seized it and left it and Mr. LaVecchia still has the car in his possession.

THE COURT: We will adjourn this. Mr. Krinsky, any problems?

MR. KRINSKY: Just one thing. I made repeated requests of Mr. DePetris for copies of the criminal records of the witnesses that the Government intends to call. Mr. DePetris in response to a discovery letter indicated they would provide it --

THE COURT: Yes.

MR. KRINSKY: They took the position that it would not be until trial. Also they indicated that apparently one or more of his witnesses does not have a criminal record. Prior criminal record. There may be some problem as to how much of that criminal record he feels obligated to turn over. He indicated to me number one that his witnesses may have a juvenile conviction and he is not sure that is appropriate to turn over. And one of the criminal records dates back many many years, more than ten years certainly, and I think Mr. DePetris' taking the position that he might turn over certain portions of the criminal records of those witnesses. I think we will have to discuss that and have the Court make a ruling.

MR. DE PETRIS: That doesn't require any testimony, just law.

THE COURT: I don't allow questions on records back more than ten years. The Government ought to be able to bring out the criminal records themselves rather

than have it wait for cross-examination. I think the best way to do it is through leading questions within the ten year period rather than asking a misleading question such as have you ever been convicted -- and I apply the same rule on Government witnesses as I do on the defendants.

MR. LA ROSSA: The fact is that we are entitled to know about it, whether your Honor permits the use of it is another factor.

MR. KRINSKY: He must turn over the entire record of any witness he intends to call. If the Court so rules that we can't question on A and B, that will be the Court's ruling.

THE COURT: Well, it it raises other problems with a juvenile record that are not supposed to be used but they are still turned over.

MR. KRINSKY: You see, this conviction may go back where techically it is not a juvenile conviction.

In addition, I don't know about the other counsel but I certainly would like to inquire into convictions of more than ten years --

THE COURT: You give me cases that say I have to. I am not going to apply different rules to defendants as to witnesses unless you show me I must.

Now, we are at the eve of trial, certainly with

respect to any co-defendants give the copies of the' criminal record.

MR. DE PETRIS: Yes, your Honor. You are referring to within ten years?

THE COURT: Give the whole record. I will rule on the permissibility of questions at the appropriate time.

MR. FISCHETTI: I didn't bring this up before but on Thursday when I met with Mr. De Petris I went over certain items of discovery and bill of particulars, and we received no information from the Eastern District. Mr. DePetris felt that perhaps discovery would be complete in Southern District. We left open many items, such as the conviction record, dates in the indictment, also some information on Brady material. I thought I would bring it to the attention of the Court.

MR. SPARROW: I would presume my client is in the same position just mentioned, that is we received no material and I suppose in the intervening period of time I can chat with Mr. DePetris --

THE COURT: It's just as well. We will take a recess until 12:00 and get all the material you can and talk to Mr. DePetris and give me whatever documentation I may need including cases with respect to the search warrant and the automobile seizure issue.

(A recess was taken at this time while the Court attended to another matter.)

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THE CLERK: Criminal cause for trial, United States v. Anthony LaVecchia, Edward Bogin, Herbert Kurschenoff and Nicholas Andriotis.

MR. DE PETRIS: I believe we are missing a couple of attorneys.

THE COURT: Mr. Sparrow, apparently, can never get here on time.

Let me see the documents on the search warrant suppression and was there a memorandum opinion of Judge Stewart on it?

MR. LA ROSSA: I'm getting them together.

MR. DE PETRIS: I have a copy of the search warrant and affidavit, the affidavit for the search warrant.

MR. LA ROSSA: Here's a copy of Judge Stewart's decision.

Would you like copies of our moving papers as well, your Honor?

THE COURT: Yes, I can look at those.

(Said documents handed to the Court.)

THE COURT: Mr. LaRossa, you say you have something more about the Dun & Bradstreet report?

MR. LA ROSSA: Yes, sir.

Does your Honor have the warrant and the affidavit?

THE COURT: Yes.

MR. LA ROSSA: On the second page of the affidavit, may it please the Court, in the first paragraph of the rider of Thomas Tully, your Honor will note that it reads, "Subsequently, investigation was initiated by the affiant and other agents operating at his direction and a review of the files of Dun & Bradstreet, Inc., New York, New York, reveal that Anthony LeVecchia was in fact doing business as Beacon Discount Sales at 270 Lafayette Street and at 125 Eastn 18th Street in partnership with Edward Bogin and that Bogin and LeVecchia also operate Beacon Printing at 270 Lafayette Street."

I submit to the Court that is absolutely false.

THE COURT: Judge Stewart found it wasn't vital as I read his memorandum.

Is Agent Tully here?

MR. DE [illegible]: He's upstairs, your Honor.

THE COURT: Suppose we get him in and dispose of this part.

I can't order the Southern District file here that easily.

Is this copy of the search warrant something that can be put in evidence here, the search warrant of the supporting papers?

3 MR. DE PETRIS: This is a copy of the affidavit which was executed.

MR. LA ROSSA: We agree that is a copy.

THE COURT: Mark it as Government Exhibitl now on the suppression hearing.

THE CLERK: Government's Exhibit 1, affidavit for search warrant dated February 15th, 1973, marked for identification.

(So marked.)

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THE COURT: You saw Mr. Krinsky and Mr. Sparrow here. I gather they thing they are not concerned with this part of it?

MR. LA ROSSA: They asked permission to go out to make a phone call.

THE COURT: Very good.

(continued next page.)

4 Tu-ly - direct

THOMAS J. TULLY, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please take the stand and state your name for the record and please spell it.

THE WITNESS: Thomas J. Tully, T-u-l-l-y.

MR. LA ROSSA: May I have Government Exhibit 1, please.

DIRECT EXAMINATION

BY MR. LA ROSSA:

Q Are you an agent employed by the United States Secret Service?

A Yes.

Q Were you so on February 15th, 1973?

A Yes, I was.

Q In the course of your employment as an agent of the Secret Service, did you swear to a rider attached to a search warrant marked as Government Exhibit 1 (handing to the witness)?

A Yes, sir, I did.

Q And did you read that application before you signed it?

A I believe I did.

Q Was there any question in your mind about that?

A Not at that time, no, sir.

Q Did you, sir, in that affidavit state that you had checked the files of Dun & Bradstreet, sir?

A Did I say that I had checked them?

Q Yes.

A I don't recall that I said that I had checked them personally, no, sir.

Q Did you say that an investigation was initiated by you and other agents and that a review of the files of Dun & Bradstreet revealed certain things?

A Yes, sir, I recall mentioning Dun & Bradstreet as a result of an investigation, yes, sir.

Q Did you prepare this affidavit in association with -- withdrawn.

Did you prepare this affidavit under the direction of an assistant United States Attorney?

A Yes, sir.

Q Did he tell you and did you know that this affidavit was being used to support a warrant thatwas being submitted to a judge for his signature?

A Yes, sir.

Q Did he tell you that each and every fact that was included in this affidavit you would ask the judge to

rely upon in issuing this warrant --

A Yes, sir.

Q -- to search these premises?

Did you in that affidavit state that the Dun & Bradstreet report revealed that Anthony LeVecchia was in fact doing business as Beacon Discount Sales at 270 Lafayette?

A Yes, sir, as I recall, I did.

Q Was that true?

A To the best of my knowledge at that time it was, yes, sir.

Q Who told you that the Dun & Bradstreet records were checked and this determination was made?

A My I respond without -- can I elaborate slightly?

Q Were you told this by someone?

A I was told, I believe, by the supervisor of the section, Mr. O'Callahan.

Q Of Dun & Bradstreet?

A Yes.

I knew this check was made. I was aware of it having been involved in the investigation but the results of the same, the specific results, I was not aware of exactly what was found out until I was over in the U. S. Attorney's office to put a search warrant together and I received

information by telephone asking to check the records.

Q From whom?

A Mr. O'Callahan.

Q Who is Mr. O'Callahan?

A Then the supervisor of the Counterfeit Squad.

Q Is it your testimony, that Agent O'Callahan telephoned you at the United States Attorney's office and told you that he had examined the records of Dun & Bradstreet?

A No, sir.

Q Which revealed the following?

A No, sir, that Dun & Bradstreet check had been done by another agent prior to that time.

Q Who?

A I thought at one time it was done by S/A Healey.

Q Did he make a determination, report to you the material that's listed in this affidavit?

A I received it from Mr. O'Callahan.

Q Did Mr. O'Callahan tell you that Agent Healey gave this information?

A He indicated it was on the basis of a report in the office. He didn't tell me who had done it.

Q Who else examined the records of Dun & Bradstree came up with these determinations besides Agent Healey?

A My recollection, Agent O'Meara.

Q O'Mara?

A O'Meara.

Q And Agent Healey?

A Healey.

Q Is it O'Healy?

A Just plain Healey.

Q Both those agents examined the files of Dun & Bradstreet, reported to your supervisor in charge of the Counterfeit Squad and based upon their investigations you submitted the signed sworn affidavit attached to Government Exhibit 1, is that your testimony?

A Yes, sir.

Q And that exhibit recites the fact that Dun & Bradstreet's record reveal that Anthony Lavecchia was in fact doing business as Beacon Discount Sales at 270 Lafayette and at 125 East 18th Street in partnership with Edward Bogin and that Bogin and Lavecchia also operate Beacon Printing at 270 Lafayette Street; is that true?

A Yes, sir.

Q That's not true, is it?

A Not all of it, sir.

Q Is any of it true?

A (No response.)

Q If so, tell us what portion, please.

A Levecchia and Bogin were operating Beacon Discount and Beacon Printing out of the same quarters.

Q Please understand my question now.

My question --

THE COURT: You're trying to get an answer. Let's hear it.

MR. LA ROSSA: He's answering from his own experience.

BY MR. LA ROSSA:

Q Are you or are you not telling us what Dun & Bradstreet revealed to you? That's all I'm interested in.

THE COURT: Let him give his answer.

A I haven't reviewed the Dun & Bradstreet reports since the time --

THE COURT: You are telling what the true facts are. Go ahead.

THE WITNESS: Yes, sir.

MR. LA ROSSA: May it please the Court, most respectfully, may I object to the Court's questioning since it's outside the frame of the affidavit?

THE COURT: Ask it your own way, we'll get recross or whatever.

Q Agent, I'm interested in your telling us whether or not it is true that the files of Dun & Bradstreet revealed those words that I just read to you?

A I don't know now, sir.

Q Did you know then?

A I took the information as it was given to me, put it into the report, yes, sir, to the affidavit.

MR. LA ROSSA: Would your Honor direct this be marked , please?

THE CLERK: Defendant's Exhibit A, Dun & Bradstreet report, undated, marked for identification.

(So marked.)

THE CLERK: I'm sorry, it's dated 12/17/71.

MR. LAROSSA: Would you mark this as well, I think this should be marked a Government Exhibit since it was handed to me by the Government.

MR. DE PETRIS: Why don't you mark it as 3500 material.

MR. LAROSSA: Fine.

THE CCLERK: Government's Exhibit 3500-1 Treasury report dated 1/29 through January 31.

(So marked.)

BY MR. LA ROSSA:

Q Agent Rully, can you tell me what date you

signed this affidavit for us?

A February 15th, 1973.

Q I now show you what's been marked 3500-1 which appears to be a report dated February 7th, 1973.

Have you ever seen that report?

A Yes, sir.

Q When was the first time you saw that report?

A Sometime after it was made up, to the best of my recollection, after I made the affidavit.

Q After you made the affidavit?

A Yes, sir.

Q Can you tell us when in relation to the time you signed that affidavit you saw that report?

Would it have been a week after?

A Probably.

Q Sometime within a week of the 15th of February?

A Sometime -- well, let me try to think. Probably the following week.

Q So on that date, one week after you signed the affidavit, you knew that Agent O'Meara had found nothing with respect to the records of Dun & Bradstreet?

A No, this doesn't seem to follow nothing.

Q It says they have no record, does it not, listed as Beacon --

A Discount Sales.

Q That's completely the opposite of one of the statements you made in the affidavit marked Government Exhibit 1; isn't that right?

A This does relate information to Beacon Manufacturing or Beacon Printing.

Q Please read the report and tell us whether or not it differs from your affidavit?

A Yes, sir, it does.

Q Does it?

You knew that one week after you signed that affidavit or thereabouts?

A Apparently, I did.

Q At that point you knew that something that you signed which was supporting an order to search a premises wasn't completely true; is that right?

A When I read this, I didn't relate it to being particularly contrary to this affidavit.

Q Did you ever notify the Judge who signed that warrant of what you determined in that report?

A No, sir.

Q Did you ever pick up the phone and notify the Assistant United States Attorney who prepared your affidavit and told him what you found in that report?

A No, sir, not until after we were reviewing the

case in Southern District.

Q As a matter of fact, he brought it to your attention?

A Yes, sir, I believe he did.

Q We told you that we brought it to his attention; isn't that right? That defense counsel had determined that that Dun & Bradstreet report did not state what your affidavit did, isn't that right?

A Right.

Q That was Mr. Littlefield, was it not?

A Yes, sir.

Q That's the first time you had any conversation with Mr. Littlefield.Up to today, you have never notified the judge who signed the warrant of the true facts; is that right?

A Yes, sir.

Q Peering that report in front of you, sir, tell me whether that report states that Anthony Lavecchia was doing business as Beacon Discount Sales at 270 Lafayette Street?

A No, sir, it does not.

Q Does it state that he was doing business as Beacon Discount Sales at 125 East 18th Street?

A No, sir, it does not.

Q Does it state that he was in partnership with one Edward Bogin in Beacon Discount Sales?

A No, sir.

Q Does it state that Bogin and LaVecchia operated Beacon Printing at 270 Lafayette Street?

A No, sir, it states Mr. Bogin did.

Q So, a s a matter of fact, every statement that you made in Government's Exhibit 1 with respect to Dun & Bradstreet was completely untrue, isn't that right?

A With respect to Dun & Bradstreet -- I knew of my own knowledge LeVecchia operated both places. I had seen him in both places operating the business.

Q I'm referring to your statement, the review of Dun & Bradstreet revealed A, B, C and D, all false, each and every one?

A That is not correct; yes, sir.

MR. LA ROSSA: I have no further questions.

MR. FISCHETTI: No questions, sir.

CROSS-EXAMINATION

BY MR. DE PETRIS:

Q Mr. Tully, you testified that you read this document, Government 3500-1 approximately one week after you executed that affidavit?

A That would be at least a week after.

Q could it have been longer?

A It could have been but I recognized my handwriting at the top as indicating it should be indexed and files, so it's sometime after it went to my basket. I recognize it as my handwriting. I know I didn't do it prior to the time of the search.

Q could it have been a month?

A It could have been but I doubt it.

Q Could it have been two months?

A It could have been.

Q You testified that of your own knowledge, you knew that Mr. Levecchia was operating both Beacon Discount Sales and Beacon Printing Company; is that your testimony?

A I have observed him personally on the 125 East 18th. I had been involved in discussions with the informant, in this case, several of the informants in this case, and I had either observed him personally on Lafayette or had been the direct recipient of other agents on surveillance that he was in there.

Q That he was at 270 Lafayette Street?

A Yes, he had been observed in that place by another agent.

MR. LA ROSSA: May it please the Court, I don't want to interrupt the questions, but you'll note my

my objection to whatever the subjective knowledge of the agent is, I submit to the Court, has no relationship to the warrant that was signed by the Magistrate unless it's proven.

THE COURT: I'll hear argument later on. Objection overruled.

Q Would you continue?

A I was the recipient of verbal reports and written reports that Lavecchia was seen on that street, inthat location, inside the Beacon/Printing/Discounts area.

Q I believe the affidavit, Government's 1, concerning the portion of the rider which mentions the Dun & Bradstreet check, you received that information to the best of your recollection, from whom?

A Mr. O'Callahan, over the phone.

Q That check with Dun & Bradstreet was not done by you?

A I did not do the check, no, sir.

Q Where were you when you were in the U. S. Attorney's office?

A At the U. S. Attorney's office, time of preparation.

Q On February 15th, 1973?

A Yes.

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Q Was this after or prior to the defendant being arrested?

A Both defendants were in custody at that time.

Q You recall the time this was?

A Sometime after 6:00 o'clock in the evening.

MR. DE PERRI: I have nothing further, your Honor.

THE COURT: Anything more?

MR. LA ROSSA: Just a few.

REDIRECT EXAMINATION

BY MR. LA ROSSA:

Q Didn't you tell us you recognized your initials on that report?

A I recognized my handwriting up at the top. That's why I know I have seen it before.

Q Would you point out where that is?

A (Indicating).

Q Is that where it say "Index and file"?

A Yes.

Q Is that"index and file"a direction?

A To a clerical employee.

Q When is that "Index and File" normally put on a report, sir?

A In my case, it would go on the report after I

had read it.

Q When would it get to you under normal circumstances?

A At this time, sometime after it had gone up to the boss. I was reading for information under most circumstances. Mr. O'Callahan would have sent it up to the boss'. Sometime it crossed my desk, to be indexed and filed.

Q When I asked you what your best recollection was and you said about a week after the signing of that affidavit, that's based upon your normal experience, is it not?

A Considering the activity at this period of time with the seizure of the plant and so forth, I would say at least a week afterwards.

Q So it's under normal circumstances, wouldn't be a month or two months after that?

A No, sir.

Q You told us that you made personal observations at 18th Street and that you were the recipient of verbal and written reports with respect to Mr. Lavecchia, right?

A I had seen reports that were written.

Q Did you go in and tell the Judge that signed that order any of the facts that you are testifying to here,

other than what's included in that warrant?

A At what time, sir?

Q At the time he signed it?

A Did we give him additional background?

Q Did you personally go in and tell the Judge?

A I was personally present.

Q But you had no conversation?

A We did not have a conversation.

MR. LA ROSSA: I have no further questions.

THE COURT: Let me see the papers.

Mr. LaRossa, I don't read this affidavit as confining the information to Dun & Bradstreet. The sentence says, "McMillan advised that Anthony Levecchia had two business locations in Manhattan, one located at 125 East 18th Street, another at 270 Lafayette Street on the second floor known as Beacon Discount Sales. Subsequently, investigation was initiated by the affiant and other agents operating at his direction and a review of the files of Dun & Bradstreet Inc., revealed Anthony Levecchia was in fact doing business at Beacon Discount Sales at 270 Lafayette and at 127 East 18th Street in partnership with Edward Bogin and Bogin and Levecchia were operating Beacon Printing at 270 Lafayette Street."

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MR. LA ROSSA: That's the portion I'm directing the Court's attention to, the portion that starts, "And a review of the files of."

THE COURT: Why do you take only a half sentence? Don't I have the right to assume the Magistrate read the entire application?

MR. LA ROSSA: Of course.

That sentence began"Subsequently --It says, "Subsequently, investigation was initiated by the affiant and other agents operating at his direction, and a review of the files of Dun & Bradstreet disclosed A,B, C, D." That's the only way it can be read.

I think the sentence can reasonably mean the investigation by the witness and the investigation by the agents operating at his direction and review of the Dun & Bradstreet files reveal these facts.

MR. LA ROSSA: May I ask the witness another question?

THE COURT: Dun & Bradstreet shows Bogin was doing business at 270 Lafayette. The first sentence was Levecchia was doing business there. Isn't it a reasonable inference they were in partnership?

MR. LA ROSSA: The Dun & Bradstreet doesn't show Mr. Levecchia was doing business there.

THE COURT: Is it necessary the affidavit to

the Magistrate be based onthe Dun & Bradstreet report as distinguished from the other facts?

MR. LA ROSSA: The affidavit has a statement in it that the Dun & Bradstreet reports disclose Bogin and Levecchia were partners doing business as. That's not true.

THE COURT: If I cut the sentence in half --

MR. LA ROSSA: No, sir, I most respectfully submit how your Honor can read it that way --

THE COURT: It talks about subsequent investigation by Mr. Tully and other agents. It didn't take four agents to read a Dun & Bradstreet report. It must mean the Dun & Bradstreet report and the other information. The Dun & Bradstreet shows Bogin was at 270 Lafayette. The other information shows Levecchia was at 270 Lafayette. It seems to me it's an immaterial variation, if any, as Judge Stewart said.

MR. LA ROSSA: Your Honor, necessarily I don't agree with you on it, most respectfully. I submit it is a material allegation and I think I have my record.

I really don't read the sentence the way your Honor does, not at all. I submit to your Honor that I think Mr. Tully's testimony discloses that he

intended by that sentence to submit to the Judge that the review of the Dun & Bradstreet report stated the following.That's what his testimony is, so he's the one who signed the affidavit.

THE COURT: My general rulings have been that affidavits in support of search warrants should be construed in the light of the Ventresca decision of the Supreme Court, in a common sense way and that they don't have to be part of an English sentence in third year high school.

MR. LA ROSSA: I have no quarrel withthat, however, I think your Honor is attempting to read this affidavit in a different form than the writer intended. You have a witness on the stand here, may it please the Court, who has just testified he intended by this affidavit to submit to the Court that the review of the Dun & Bradstreet reports revealed the following. I don't think there's any intertation here. If we had the bare affidavit before your Honor, with out the testimony of the witness, I submit then your Honor could interpret it in almost any way you choose but we have a witness on the stand who's testified that it's what he intended to convey to the Judge.

THE COURT: You cut him off inthe middle of a sentence. I let you do it. I still have a rihgt to go and look at what he said.

MR. LA ROSSA: There's a right to redirect. Nobody brought out anything different. The record clearly states this witness testified here under oath that this affidavit was intended to convey to the Magistrate who signed the order that,that review of the Dun & Bradstreet records reveal that Levecchia and Bogin were partners doing business as and doing business as Beacon Discount Sales.

That's exactly what it says. I most respectfully submit your Honor's interpretation is completely at variance with the witness' sworn testimony.

THE COURT: Do you want to ask more questions?

MR. LA ROSSA: No, sir.

THE COURT: Mr. DePetris?

MR. DE PETRIS: Your Honor, first of all, the Government would submit that any portion of the affidavit which may be incoorect is not material and second, i t certainly was not a deliberate misstatement.

Mr. McMillan had already indicated to Mr. Rully that Mr. Levecchia was doing business at both locations,

including the 270 Lafayette Street where the search warrant was obtained for. It would seem to me that would indicate that they were in fact doing business so if it's any type of misstatement at all, it's certainly not material and it certainly is not deliberate.

Therefore, the warrant should not be held invalid.

THE COURT: Mr. LaRossa, I have a memorandum of Judge Stewart. What is it that's wrong in it?

MR. LA ROSSA: May I respond? I don't think your Honor can determine that this isn't deliberate. This witness who we must assume has just testified truthfully states he received this information from one Mr. O'Callahan, if I got his name correctly, his superior,who told him this onthe phone.

I submit to you if we want to find out how deliberate it was, let's get O'Callahan here to find out what the basis of his information was to tell this witness, Agent Tully, over the phone that Dun & Bradstreet records reveal what Mr. Tully put inthat affidavit.

As far as I am concerned it's deliberate on

its face unless the Government can prove that O'Callahan did not state this or there's an honest mistake here.

THE COURT: If you were to cut a sentence in the middle I think you might be right, but bearing in mind this was 6:00 o'clock at night and that it referred to Dun & Bradstreet and agents investigation, I see no reason to depart from Judge Stewart's opinion that there was adequate information in the affidavits to support the issuance of the search warrant and that any error with respect to the complete facts in the Dun & Bradstreet report was immaterial.

MR. LA ROSSA: You will note my objection.

THE COURT: I don't see what harm it does Mr. Levecchia.

If Mr. Levecchia claims no interest in the property, it was validly seized on a warrant against Bogin and it's going to be admissible at the trial.

MR. LA ROSSA: Just as far as standing is concerned, your Honor, he's being charged with possession of the bills. So, our motion to suppress then is denied?

THE COURT: You're not claiming that Mr. Bogin

had possession of this, are you?

MR. LA ROSSA: I represent LeVecchia.

THE COURT: If they were validly taken from Mr. Bogin's premises, the Government has to prove at the trial Mr. Levecchia had some interest there.

MR. LA ROSSA: We have a conspiracy count here, your Honor. I'm moving to suppress the seizure of these bills.

THE COURT: Certainly, they were validly seized as against Mr. Bogin.

MR. LA ROSSA: I'm moving with respect to Mr. Levecchia.

THE COURT: I don't think you have any right to suppress evidence which was validly seized from Mr. Bogin.

You can argue at the trial there's no proof that it's attributable to Mr. Levecchia, but I think that's additional reason for denying.

MR. LA ROSSA: Your Honor is ruling we have no standing to object to this? Is that my understanding?

THE COURT: You may have standing to object but in view of the fact that on your version of the facts they were validly seized from premises occupied by Mr. Bogin. You haven't -- there's no

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merit to any objection on behalf of Mr. Levecchia.

MR. LA ROSSA: May it please the Court so the record is completely clear, Mr. Bogin -- Mr. Levecchia is moving to suppress these bills, personally under the line of cases that state where he's being charged with possession of the contraband in issue. He has the right to raise the Fourth Amendment.

THE COURT: I know of no such case in which the items were validly seized from a co-defendant.

MR. LA ROSSA: We are claiming it was illegal against Mr. Bogin as well.

That has to be the basis of our motion, your Honor.

THE COURT: There's no basis with that.

MR. LA ROSSA: With respect to the falsity of it, your Honor. That's what we want you to rule on.

THE COURT: The warrant correctly states Mr. Bogin was an occupant of these premises, doing business there. The affidaivt shows that counterfeit bills were obtained from these premises.

MR. LA ROSSA: Your Honor will note then that my objection and motion to suppress is based upon the fact that they were perjurious statements included in the affidavit attached to the warrant , submitted to

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the Magistrate which was the foundation of the search.

THE COURT: There's no basis for charging they were perjurious.

MR. LA ROSSA: Certainly false.

THE COURT: No, they were stated in a misleading manner on the basis of a telephone call from Mr. O'Callahan and a quick drafting by an Assistant United States Attorney.

MR. LA ROSSA: Your Honor will note I suggest it's more than misleading based upon the witness' testimony and I can accept your Honor's decision.

THE COURT: Except your testimony of the witness is based on half a sentence, not on the whole sentence. I've ruled.

MR. FISCHETTI: With Mr. Bogin, originally Mr. Bogin and Mr. Levechhia moved inthe Southern District before Judge Stewart for the suppression of these items. I want the record to be entirely clear Mr. Bogin also moved for the suppression of these items, denied by Judge Stewart.

THE COURT: Any merit in Mr. Bogin's objection?

MR. FISCHETTI: I think so. Based upon , and I call it a false statement inthe affidavit submitted to the issuing magistrate. Mr. Bogin and Mr. Levecchia

upon the check of the Dun & Bradstreet were partners in Beacon Discount I consider that a material fact, sir. I don't read the sentence in the disjunctive. I believe it's one sentence. The Dun & Bradstreet records were reviewed by the Government and it showed Mr. Bogin and Mr. Levecchia were partners; basic part of the affidavit. Other than that, your Honor, may it please the Court, statements from one Mr. McMillan, an admitted informant which are largely uncorroborated.

THE COURT: They don't have to be.

MR. FISCHETTI: They don't, sir.

THE COURT: They were corroborated. He was observed at 270 Lafayette Street.

MR. FISCHETTI: Yes, sir. I don't know what the issuing Magistrate relied upon in this warrant, sir. I don't know whether the fact he believed after reading that affidavit that Dun & Bradstreet files had in fact been checked and that they revealed that Mr. Bogin and Mr. Levecchia were partners and based upon that, issued an order for the search subsequent to the arrest. I don't know that, sir.

THE COURT: You assume that perhaps he overlooked the part that said McMillan advised the affiant he overheard Bogin talking to Anthony Levecchia on the

telephone stating, "The package is already there, I've got the key, I'll meet you."

MR. FISCHETTI: I don't consider that. I consider the other statement in it is wrong and false. I don't know what he considered and therefore I move,-- I'm stating this for the purpose of the record.

I did not examine Mr. Tylly because Mr. LaRossa's point and my point at that time, were exactly the same.

THE COURT: I'm not going to read search warrants with that kind of nitpicking search for errors.

You can step down, Mr. Tully.

THE COURT: What's next?

(Witness excused.)

MR. LAROSSA: We have the search of the vehicle.

THE COURT: What about the search of the vehicle?

MR. DE PETRIS: The Government calls Special Agent Kramer.

(continued next page.)

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RONALD T. KRAMER, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Agent Kramer, by whom are you employed?

A United States Secret Service.

Q What capacity?

A Special Agent.

Q Directing your attention to February 15th, 1973, were you involved in an investigation involving the defendant Anthony Levecchia and others?

A Yes, sir.

Q What was your assignment on duty with respect to that investigation?

A I had overall supervision for the surveillance and for the events of that day.

Q Did that surveillance include observations at 125 East 18th Street in Manhattan?

A Yes, sir.

Q Is that the address of Beacon Discount Sales?

A Yes, sir.

Q One of the addresses?

A Yes, sir.

Q Now, did there come a time when you delivered a quantity of money to John McMillan?

A Yes, sir.

Q Was that prerecorded money?

A Prerecorded Government monies.

Q Subsequent to the delivering of money to Mr. McMillan, did you observe him go to 127 East 18th Street in Manhattan?

A Yes, sir.

Q Could you briefly relate to the Court what you observed?

A Yes, sir, on February 13th, two days prior to the 15th, MR. McMillan went to Beacon Discount on East 18th Street to meet Mr. Levecchia, Anthony Levecchia, where they had some conversation regarding the sale, purchase, of counterfeit currency. I was parked approximately around the corner and Mr. McMillan was wearing a radio Kel telephone device on his body to which I was monitoring.

I had a radio with me in my car and I monitored the conversation between Mr. Levecchia and Mr. McMillan and during the conversation it was discussed about McMillan having some friends who were interested in picking up some money, I think the sum of $25,000 in counterfeit was mentioned

and he would like Mr. Levecchi to produce currency and arrangements were made for a telephone call that evening or the day after to arrange for the pickup and purchase of this currency and then they parted, left each other's company.

Q Now, subsequent to that, on February 15th, 1973, did you surveil a meeting between Anthony Levecchia and John McMillan?

A Yes, I did, sir.

Q You and other agents?

A Yes.

Q Were you also monitoring a Kel transmitter on February 15th, 1973?

A Yes, sir, I was.

Q Now, on February 15th, did there come a time when Mr. Levecchia left the presence of John McMillan?

A Yes, sir, there was a time.

Q Did you or other agents of the Secret Service observe him get into a vehicle, depart the area?

A Yes, sir.

Q After this investigation was concluded, did you have conversations with other agents concerning their surveillance?

A Yes, sir. I consolidated the fact of their survei-lance.

Q From your discussions with these other agents, did you determine whether any other agents had seen Mr. Levecchia arrive at 270 Lafayette Street in Manhattan?

A Yes, sir, I did.

Q Was this shortly after you or other agents had seen him leave 125 East 18th Street?

A Yes, sir, approximately twenty minutes or so after he departed that area.

Q Did Mr. Levecchia enter 270 Lafayette Street?

A Yes, sir.

Q You didn't see this, another agent told youthis?

A Yes, sir.

Q Shortly thereafter, did Mr.Levecchia exit 270 Lafayette Street?

A Yes, sir.

Q During your monitoring of Mr. McMillan's Kel transmitter when he was speaking to Mr. Levecchia in front of 125 East 18th Street before you went to 270 Lafayette, did you overhear any of the conversation?

A Yes, sir.

This was on the 15th?

Q 15th.

A Yes, sir.

Q Did you overhear any conversation concerning Mr. Levecchia leaving and where he was going?

A I heard conversation that he was leaving but at that time I didn't know where he was going.

Q Did you subsequently determine why he left?

A Yes, sir, I did.

Q How did you do that?

A After we had -- we picked up counterfeit currency at Penn Station and upon my discussion with the other agents who were doing the surveillance, we were able to piecemeal the story and Mr. McMillan's testimony -- that is his information that he provided when we finally met later that day.

Q What was that?

A That he left in order to meet someone who was to provide him the counterfeit currency. However, apparently, when he got to this location, the other person was not there. They had just missed each other and at the same time while he was at this other location, that is 270 Lafayette looking for this individual, unbeknownst to him this individual showed up at the East 18th Street location looking for Mr. Levecchia.

Q Who was that?

A That was the other defendant, Mr. Bogin. They had just missed each other.

Q Continue.

A They finally did meet one another near 18th Street where something was passed.

Q Did you observe where Mr. Bogin and Mr. Levecchia met?

A No, sir.

Q It was another agent?

A Yes, sir.

Q After Mr. Levecchia and Mr. Bogin met did you observe Mr. Levvechia then pick up Mr. McMillan in front fo East 18th Street a short time therafter?

A Not me personally, somebody else did.

Q Another agent?

A Another agent, yes, sir.

Q Did you subsequently follow the vehicle that had picked up Mr. McMillan?

A Yes, sir, I caught them up at the corner about a block away, proceeded behind them in my own vehicle.

Q After some further observations did there come a time when you and John McMillan proceeded to Penn Station?

A Yes, sir, we both met at 23rd and Park Avenue South and at that time Mr. McMillan said he received a key to a locker in Penn Central Station where there was counterfeit currency located.

At that time myself and Mr. McMillan proceeded to Penn Station immediately.

Q Did he say who he had received it from?

A Yes, he did, Mr. Levecchia.

Q Then you proceeded to Penn Station?

A Yes, sir.

Q And received what was in a particular locker?

A Mr. McMillan did, yes, sir.

Q Under your observation?

A Yes, sir.

Q You received that, the contents of that locker from him; is that correct?

A Yes, sir.

Q What was the contents?

A It was two packages, empty boxes and a brown wrapped packet of approximately $25,000 in counterfeit currency.

Q Ten dollar bills?

A Ten dollar bills, yes.

Q Upon receiving this counterfeit money from Mr. McMillan, did you then give a signal to proceed withthe arrest of certain individuals?

A After that I discovered it was counterfeit. I gave the signal over the radio in the car.

Q Where was Mr. Anthony Levecchia arrested?

A At the 18th Street location, Beacon Discount Sales.

Q And he was arrested by other agents?

A Other agents of the Service, yes, sir.

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Q At the time of his arrest, after discussing the results of the arrest with other agents, would you relate to the Court what was found when Mr. Levecchia was arrested?

A Yes, sir. Initially, the instructions I gave to the other agents that anything that was found, that is evidence or contraband, fruits of crime were to be given to me personally so I would be able to keep tabs in the record of them.

Subsequent to their arrest, I returned to the Field Office and as the time went by the agents came back from the field, different locations and surrendered to me evidence and fruits of crime.

I received -- I was quite interested in $2500 in the Government prerecorded monies that I had signed out. I received all of this back from two particular agents; Agent Satterlee gave me a fifty dollar Federal Reserve note. Another agent , DAle McIntosh, gave me the remaining $2450, Government prerecorded monies.

Q Did Agent Satterlee advise you where he had recovered the fifty dollars --

MR. LAROSSA: I'm going to object unless I know I have an opportunity to examine these witnesses.

THE COURT: I'll overrule your objection. I'll rule on you when you call witnesses.

A Yes, sir, Agent Satterlee said he found the fifty dollars Federal Reserve note with other monies, genuine monies, Mr. Levecchia's pants pocket at the time of his arrest.

Q Did Agent McIntosh indicate where he had found the $2450 in genuine currency?

A Yes, sir.

Q Where was that?

A The trunk of Mr. Levecchia's automobile.

Q Did he also find other items in the trunk?

A Yes, he did, sir.

Q Now, from your discussions with other agents, did you determine the circumstances under which the arrest of Mr. Levecchia took place?

A Yes, sir.

Q Would you relate to the Court --

MR. LA ROSSA: Note my objection to this, please.

THE COURT: Yes.

MR. LA ROSSA: I don't want to keep bobbing up.

THE COURT: It's a standing objection. Tell us about it.

THE WITNESS: When -- how he was arrested?

Q The circumstances of the arrest, fromthe time you gave the signal to go ahead and make the arrest.

A I am at the location, on the street, my car with John McMillan, proximity of Penn Station. After I found out the contents of the pack was ten dollar bills, I gave the signal over the radio.

At this time, one team arrested Anthony Lavecchia some other people at the 18th Street address and I understood from talking to the members of this particular team that when I did give the signal over the radio to make the arrest, they had to wait a few moments in order to effect the arrest because in the interim of time, Anthony Levecchia had returned to the store.

When I gave the signal over the air, he had walked out of the store, down the block, went to his automobile, so they didn't want to go into the store and run after him down the street to effect the arrest of all these people.

What they did was hold on for a moment or two to see whether or not he was returning to the store which in fact, he did.

He left his automobile, came back to the store and at that time when they had everybody buttoned up in the store itself, off the street, the agents went into the store and made the arrest of the people that were at Anthony

LaVecchia's location at 18th Street.

While this was going on, maybe a couple of minutes prior to my giving a signal, the second team stationed at 270 Lafayette Street went into those premises and they arrested Mr. Bogin at the location of his printing office.

Q So that a moment or so prior to your giving the signal, Mr. Levecchia had left the Beacon Discount Sales at East 18th Street, gone to his car around the corner, for a couple of moments and returned to East 18th Street?

A The instructions I gave them was"button them up inside the location."

I didn't want people running up and down the street. Time was with us.

Q Agent Kramer, how many counterfeit investigations have you worked on?

A (No response.)

Q Approximately?

A 100, 120.

Q Have youpurchased counterfeit currency on a number of occasions?

A Yes, sir, I have.

Q Approximately how much?

A Four or five, six times, either by myself or with people that I accompanied.

MR. LA ROSSA: If the purpose of this is to prove it was counterfeit money at Penn Central --

MR. DE PETRIS: No.

MR. LA ROSSA: I'm sorry, I was trying to save time.

THE COURT: Are you pretty near through with this witness.

MR. DE PETRIS: Almost.

THE COURT: Go ahead.

Q Based upon your experience, Agent Kramer, in purchasing counterfeit money from other individuals, is it common for an individual who sells counterfeit money to have more than the individual package for which he's prepared to sell?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

THE WITNESS: I would say yes, but I think two reasons: First of all, they might be able to sell you more if they have it available. They'll always push for a bigger sale just to really make as much money as possible.

Two, it's a matter of, I guess, transportation. You're dealing with, I guess, a hot item. If you can move it one time rather than two or three times, they

prefer to take one chance than the many.

I would answer your question based on some of the buys I've worked in the affirmative. They would have more.

BY MR. DE PETRIS:

Q Did that specifically occur in one of the transactions in this case?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

THE WITNESS:Yes, sir, it idd.

MR. DE PETRIS: I have nothing further.

THE COURT: Before we have the cross-examination, I'll hear Mr. Bobick on another matter.

MR. LA ROSSA: Would your Honor direct the U. S. Attorney to give me the 3500 material.

(Recess.)

(Witness resumes the stand.)

CROSS-EXAMINATION

BY MR. LAROSSA:

THE CLERK: Government's Exhibit 3500-2 Treasury Department report dated 2/26/73, marked for identification.

(So marked.)

MR. LA ROSSA: May I have it, please.

THE CLERK: Yes (handing).

Q Agent Kramer, when was the first time you saw Anthony Lavecchia, please?

A In person, physically?

Q When you physically observed him?

A February 13th, I believe, 1973.

Q Is that the day that you told us that you went with McMillan to Beacon?

A Yes, sir.

Q And is Beacon on East 18th Street?

A Yes, sir.

Q And did you park your vehicle in such a manner that you were able to observe the premises in question?

A No, sir , not all the time.

Q Where were you parked?

A Around the corner.

Q What street?

A On 17th.

Q In other words, one city block away from the premises?

A Yes.

Q Did you remain in that car throughout the period?

A Yes, sir.

Q Where did you see Mr. Lavecchia on February 13th?

A In front of the shop, sir.

Q Is that the time subsequent to the time you located the car on 17th Street?

A No, sir, if I may clarify, I did on occasion drive around the block.

Q You told us that you had a Kel set on Mr. McMillan and that you heard portions of this conversation

A Yes, sir.

Q In the vehicle?

A Yes, sir.

Q Is that right, and you were with another agent at the time?

A No, sir.

Q Alone?

A Yes, sir.

Q Had you ever spoken to Mr. Lavecchia at that time?

A No, sir.

Q The only thing you knew at that time was that Mr. McMillan was speaking to another individual?

A That is correct, sir.

Q When you saw Mr. Lavecchia for the first time, was he alone or with someone else?

A He was with Mr. McMillan.

Q Did you see him receive anything from Mr. McMillan?

A No, sir.

Q Am I correct in stating you only saw Mr. Lavecchia once, on that particular day?

A Once -- I would say a minimum of once, maximum of twice. I'm not too sure.

Q On either occasion you never saw him receive a package from Mr. McMillan or give it to him?

A That is correct.

Q When is the next time you saw Mr. Lavecchia?

A On the 15th.

Q When was that?

A In the moving surveillance I had of his vehicle.

A Of course, subsequent to his arrest.

Q What time did you get to the premises on 18th Street on the 15th?

A I would approximate 1:30, 2:00 o'clock or so in the afternoon.

Q Did you see Mr. Lavecchia with Mr. McMillan on that day?

A Not until the moving surveillance, sir, in vehicle.

Q Did you tell us that you saw Mr. Lavecchia leave the presence of Mr. McMillan, get into a vehicle and depart the area?

A No, sir, I did not see that.

Q You didn't see that?

A I didn't personally see that.

Q Did you tell us that Lavecchia went to 270 Lafayette Street?

A Yes.

Q Did you see that?

A Not I, sir.

Q Did you tell us that twenty minutes later he exited 270 Lafayette Street?

A Yes, sir.

Q Did you see that?

A Not I.

Q By the way,prior to Mr. Lavecchia leaving the 18th Street area, you didn't see Mr. McMillan hand him anything or he hand Mr. McMillan anything?

A No, sir.

Q Now, did you tell us Mr. Lavecchia met Mr. Bogin?

A Yes, sir.

Q And did you tell us that you observed or someone observed something being passed between the two?

A No, sir.

Q Did you tell us that Mr. Lavecchia met Mr. Bogin and something was passed to him?

A I don't remember saying that something was passed, that I saw something passed.

Q Didn't you tell us here just a few moments ago, Mr. Lavecchia and Mr. Bogin met and something was passed from Mr. LaVecchia to Mr. Bogin or from Mr. Bogin to Mr. Lavecchia?

A Yes, sir. I did.

Q You said that?

A Yes, sir.

Q Did you see it?

A No, sir.

Q Who told you that something was passed?

A Mr. McMillan.

Q Was Mr. McMillan with Mr. Bogin and Mr.Lavecchia?

A No, sir.

Q Did Mr. McMillan tell you that someone told him that something was passed?

A Yes, sir.

Q Did he tell you that counterfeit money was passed?

A No, sir, he did not.

Q Did he tell you that money was passed?

A You mean to him? I don't understand your last question.

Q From Bogin to Lavecchia?

A No, sir, he did not.

Q By the way, did you observe Mr. Lavecchia meet Mr. Bogan?

A No, sir.

Q Did you then tell us that Mr. Lavecchia picked up Mr. McMillan at 18th Street?

A Yes, sir.

Q Did you observe that?

A No, sir.

Q Where were you at the time-

A I was around the corner, sir.

Q Do you know what time this was?

A I would think approximately fifteen, twenty minutes after 4:00 p.m..

Q Let me see if I understand this: Now, everything up to 3:30, 4:00 o'clock on the 15th of February, 1973?

A Yes, sir.

Q The only thing you personally have any knowledge of is the fact that you saw Mr. Lavecchia speak to Mr. McMillan sometime on the 13th, at least once, maybe twice?

A (No response.)

Q It's the only think you know of your own knowledge; is that right?

A NO, sir, it's not.

Q Tell us what else you know of your own knowledge that you either observed, saw or overheard?

A On the 15th I also was monitoring the Kel kit and I overheard some conversation on the 15th.

Q Excluding that, what else did you see at 3:30 or 4:00 o'clock, anything?

A Nothing, sir.

Q Now, you and Mr. McMillan then went to Penn Station; is that right?

A Yes, sir.

Q Did you see MR. Lavecchia there?

A No, sir.

Q And you told us that you recovered a package from a locker in Penn Central Station and there was $25,000 in counterfeit money?

A Yes, sir.

Q At that point over the radio, you gave a signal to proceed with the arrest?

A Yes, sir.

Q Do you know of your own knowledge whether or not Mr. Lavecchia was arrested?

A Yes, sir, subsequent to the time.

Q You only know that because someone told you?

A Yes, sir.

Q You weren't present at his arrest, were you?

A That is correct.

Q You weren't present at Mr. Bogin's arrest?

A That is correct, sir.

Q Do you know where Mr. Lavecchia's vehicle was parked at the time of his arrest?

A Not exactly, sir.

Q Do you know where he was arrested?

A At that time, sir?

Q Yes, sir.

A No, sir, except that it was at the store location.

Physically outside or inside, I wouldn't know.

Q You don't know whether he was outside the store or inside the store?

A No, sir.

Q You don't know of your own knowledge whether or not there was anything on his person?

A Not at that time, no.

Q Do you know how,of your own knowledge, how the vehicle was searched?

A No,sir.

Q Do you know of your own knowledge where Mr. Lavecchia's vehicle was at the time of the arrest?

A Yes, sir.

Q How did you know that?

A We heard -- I heard descriptions on the radio. I did follow the vehicle earlier.

Q You followed a vehicle that Mr. Lavecchia drove. Did you know he owned the car at that time?

A I believe so but I'm not sure. I would have to check my records.

Q Are your records 3500-2 (handing)?

A It's not in this particular report, sir.

Q Are there other records in addition to that reciting what you did on the 13th and 15th?

A No, sir.

Q Did you know prior to the 13th of February what kind of a car Mr. Lavecchia was driving?

A Yes, sir, I believe I do.

Q Was it the same car you observed that day?

A He had two vehicles. I don't know in what frequency he drove either one of the two, but I believe one of the two was registered to him or a member of his family. We did associate it with him.

Q Do you know whether your fellow agents broke into that vehicle on that day?

A (No response.)

Q Of your own knowledge?

A Broke into? You mean physically --

Q Physically broke the windows and entered the car; do you know of your own knowledge?

A It was not reported to me, sir.

Q I didn't ask you that, sir. I said, you don't know whether or not they broke into that car, do you?

A I have no information about that.

Q You have no idea whether they pried open the trunk?

A (No response.)

Q Do you?

A No, sir, I believe it was opened by a key.

Q You have no personal knowledge of how that vehicle was opened; is that right?

A I was not there.

Q But you were told that a key was used?

A Yes, sir, I believe I was.

Q Let me ask you this: Is there a provision in the law, sir, that allows you as an agent of the Secret Service to seize a vehicle being used to transport contraband?

A Yes, sir.

Q You have done that many times, right?

A A few times, yes, sir.

Q During the hundred investigations that you've conducted in counterfeit money and your prior schooling and your knowledge of the law, you knew at that time, sir, on the 15th of February, 1973 that if you had knowledge that a vehicle was being used to transport contraband, you had the right to seize that vehicle?

A We could, yes, sir.

Q In fact, you do it on many occasions, don't you?

A Some, I wouldn't say many.

Q Some of your agents drive around cars seized during this process?

A Right, sir.

Q Did you seize this vehicle?

A No, sir.

Q Did you seize anything in the vehicle other than the $2450?

A No, sir.

Q Are you permitted to seize the contents of a vehicle that you believe is being used to transport contraband, for example, legitimate monies?

A I don't believe the law calls for that, sir.

Q Is it your testimony that you don't think that a vehicle that's seized that was used to transport counterfeit money, having real currency in it, that real currency can be seized?

A It's a very complex question --

Q I'm asking your knowledge of it.

A Restate your question. You have counterfeit and genuine currency --

Q If you know a vehicle is being used to transport contraband --

A Right.

Q -- based upon that you, under the authority given to you, seize the vehicle and you determine that it has real money in it at the time of the seizure, do you under

normal circumstances seize that real money?

A We secure it, yes, sir.

Q WEre you told that this vehicle had real money in it?

A No, sir.

Q You have no idea there was money in that trunk?

A We had a suspicion, but no information.

Q No, when you opened it, did your fellow agents find real money in the trunk?

A Yes, sir.

Q In addition to the marked money?

A I suspect -- I'm not too sure, sir, I don't know.

Q You really don't know anything about the seizure, in other words?

A I know it was definitely found with 2450, but I'm not too sure if any other monies were found.

Q Now, that's because somebody told, not because you were there?

A Yes, sir.

MR. LAROSSA: I have no further questions of this witness, your Honor. I ask for the production of the agents who made the arrest and seizure.

THE COURT: Mr. DePetris, any further questions?

MR. DE PETRIS: Yes, just two, your Honor.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q Were you advised by other agents of the Secret Service that other items were recovered from the trunk other than the $2,450 in marked money, marked genuine currency?

A Yes, sir.

Q I believe in response to Mr. La Rossa's questions on cross-examination, if you testified that another agent told you that Mr. LaVecchia was at 270 Lafayette Street, for 20 minutes, was it 20 minutes?

A It's hard to say.

Q You personally observed Mr. LaVecchia driving in a particular car, the Blue Chrysler, on February 15, 1973?

A Yes, sir, I did.

Q Was there anyone in the vehicle with Mr. LaVecchia?

A When I saw him, yes, sir.

Q Who was in the car?

A Mr. McMillan.

Q Where was the vehicle?

A (No response.)

Q Where were they when you saw them?

A They turned -- they were going north on 18th

street to approximately --

THE COURT: You can't go north on 18th.

THE WITNESS: Pardon me, sir?

THE COURT: You can't go north on 18th.

THE WITNESS: They turned up a north block, one of the avenues and then went up and across town.

They stopped approximately 20th and Lexington in that area to make a call. They used one of the public booths there on the corner and then after the call was made, I guess, they proceeded downtown.

BY MR. DE FEBBO:

Q And thereafter, you picked up Mr. McMillan and went to Penn Station?

A Yes, sir.

MR. DE FEBBO: No further questions.

CROSS-EXAMINATION

BY MR. LA ROSA:

Q Agent Kramer, which one of these cars were searched that you suggest Mr. LaVecchia was either the owner of or used?

A Sir, I can't answer that correctly. I don't know. I would think the same one that I saw but I'm guessing.

Q As a matter of fact, you're guessing as to whether or not it's Mr. LaVecchia's car, aren't you?

A The car I saw him in, sir, was the same car that we had of record as belonging to him or his family.

Q But your report here which I assume is what you're testifying from, 3500-2, just refers to this vehicle as Mr. LaVecchia's car, doesn't it?

A Yes, sir.

Q It doesn't refer to it as a 1958 something or a color car or a make or anything else?

A Not in that report, sir.

Q Not only that, but you weren't present at the time this car was seized so you have no idea what vehicle those agents went into; isn't that correct?

A I don't remember now, sir.

MR. LA ROSSA: No further questions.

THE COURT: You can step down.

Is Agent McIntosh available.

MR. DE PETRIS: I wasn't aware there was going to be a motion to suppress the $2,450 in the trunk of the vehicle.

There is an agent that is in Pittsburgh, and agents on protection assignment. We are trying to locate these individuals and have them here.

If I can have a five-minute recess to determine where they are at this point and if they're

on their way.

THE COURT: If they are not on their way, I'll listen to the tape.

MR. DE PETRIS: Thank you.

THE COURT: Meanwhile, I don't know whether Mr. La Rossa can give me the latest Supreme Court case on car search. It was a fairly liberal one this winter.

We'll take a short recess.

(Recess taken.)

MR. LA ROSSA: Doesn't that recent Supreme Court decision relate to a traffic accident?

THE COURT: It was last summer where a car was towed. It's not on all fours.

What is the answer, Mr. DePetris?

MR. DE PETRIS: I have a witness who is on his way from a protection assignment. He will be here in about 20 minutes.

THE COURT: Suppose we start the tapes in the meantime and the case I mentioned before you left, Cady v. Dombrosk i, 1973 Court 2523. It's not exactly in point.

I would like some authorities on this in the morning if you give it to me.

MR. DE PETRIS: I have some cases here.

THE COURT: Fine, give them to me.

MR. DE PETRIS: These are the portions of the transcript of February 13th.

THE COURT: Mark those for identification.

MR. DE PETRIS: Copies were turned over to defense counsel.

THE CLERK: Government's Exhibit 2 for Identification, transcript of tape made 2-13-73, and Government's Exhibit 3, transcript of tape, 2-13-73, both on the same date.

(So marked.)

THE COURT: What questions do we have if any about the custody of the tapes? Was that established before Judge Stewart or are you going to wait until the trial for that?

MR. LA ROSSA: There was nothing established with respect to custody.

MR. DE PETRIS: With respect to chain of custody, are you challenging that?

MR. LA ROSSA: For purposes of hearing, absolutely not.

MR. DE PETRIS: I believe it is an audibility challenge.

I might add those portions, those two excerpts

from the tape, the transcripts, are not for substantial length of time on this first tape.

THE COURT: Which one comes first?

(Tape relating to Government Exhibit 2 now being played in the Courtroom.)

MR. DE ROSA: Can we stop this tape for a minute?

(Tape stopped.)

THE COURT: Is this all the transcript you have?

MR. DE PETRIS: Yes, your Honor.

THE COURT: How did we know where it comes in?

MR. DE PETRIS: I have the numbers where it comes in. It's not on the transcript.

THE COURT: Where does it come in? How much longer do we have to listen? We're going more than 10 minutes now and there's been only occasions words I can understand.

MR. DE PETRIS: Does your Honor want to bring it up to the point --

THE COURT: Where is it?

MR. DE PETRIS: We have 221 revolutions and we have about 500 more.

THE COURT: Before we get to this?

MR. DE PETRIS: Before we get to the initial --

MR. DE ROSA: May it please the Court, so

7 you understand our contention here, it is that with the exception that a word here and there is audible, there's no way that one may take context of the information.

THE COURT: If the Government has parts that are audible, we know where we're moving.

MR. LA ROSSA: We're talking about a one-hour tape. Based upon an hour's inaudible tape, they're giving you basically about a reel or two out of the 900 revolutions or whatever the thing contains.

Our contention -- first of all, we don't know if that is audible.

Second of all, we contend it's completely taken in such a limited vacuum, because of the small amount of transcript that has been handed to you with relation to an hour's tape that it can be taken out of context and for that reason, we should preclude its submission to the Jury.

THE COURT: I'm not sure what's wrong with the context. I don't see what the use is of listening to another 20 minutes of noise in order to get to this part.

MR. DE PETRIS: We can move on to that portion.

THE COURT: Move it up a little.

MR. LA ROSSA: May we stipulate the rest of

the tape is basically what your Honor has heard?

MR. DE PETRIS: There are portions where sentences can be made out. I would agree that a substantial majority of the tape is similar to what your Honor has already heard.

MR. LA ROSA: Which I submit is inaudible except for a word, occasionally.

THE COURT: I gather the first part was outside where there was street noise. On some of these Kel tapes, they have one on the person and one that is monitored outside.

This is from your set in the car?

MR. MCMILLAN: Yes, sir. It was plugged into the car radio which unfortunately picks up a lot of motor sounds of the vehicle that is running.

THE COURT: Mr. McMillan didn't have a recording set on him.

MR. KRAMER: He had a transmitter. We had the recorder itself in our vehicle.

THE COURT: Move it up to that part.

(Mr. Kramer complies.)

MR. LA ROSA: Would your Honor ask the Government if they can make representation as to the identification of the voices as to what your Honor has heard so far?

9

THE COURT: What about that, Mr. DePetris?

MR. DE PETRIS: Portions of that tape were in the front of the building and there were several individuals there. We can determine when Mr. McMillan is speaking, portions of the time, and we can determine when Mr. LaVecchia is speaking portions of the time. Other times we can't determine who is talking or whether or not it is either of them and it may be other individuals who happen to be standing there.

Is that what you wanted to know?

MR. LA ROSSA: Yes, that's fine, thank you.

THE COURT: Let's move along.

(Tape continues to be played in the Courtroom.)

(Tape stopped.)

THE COURT: Is that the end of the first side?

MR. DE PETRIS: Yes.

THE COURT: This was supposed to be on the first side. I didn't hear this on the first side.

MR. DE PETRIS: The sheet of paper and the numbers where it was in was thrown out by my secretary this morning.

My recollection is it was 712 or 739. Perhaps if we do the section portion.

THE COURT: Which is right towards the end of what the conversation was.

10

(Other side of tape being played.)

(Tape stopped.)

MR. DE PETRIS: There is a serious problem. I don't have the calibrations on them. I can listen to them tonight and determine where they are.

THE COURT: Somebody should know if it's within 10 minutes, within the end of the tape.

MR. DE PETRIS: It's at the end of the tape.

THE COURT: See what you can do over night.

MR. DE PETRIS: I have the agent here who can testify.

THE COURT: All right, I'll hear him.

There ought to be a technician and who knows how to find things on these tapes. I don't think you have any right to put two questions and answers or three pieces of conversation on the tape without anything to help the Jury to find where it comes in.

You can give the parts that can be heard sometime before and mark where they are inaudible portions ubt this is making it unnecessarily difficult to identify it on the tape, to seems to me.

MR. DE PETRIS: Shall we proceed with the car search, your Honor?

THE COURT: Let's hear the car witness.

MR. DE PETRIS: The Government calls its next

JEFFREY J. KIERSTEAD, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name and spell your last name for the record.

THE WITNESS: My name is Agent Jeffrey J. Kierstead.

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Agent Kierstead, are you employed by the Secret Service?

A That's correct.

Q As a special agent?

A That's correct.

Q Directing your attention to February 15, 1973, were you and other agents of the Secret Service assigned to surveillance at the location 125 East 18th Street, in Manhattan?

A That's correct.

Q During the course of your surveillance on that date, did there come a time when you and the other agents received a signal to make the arrest at 125 East 18th Street?

A Yes.

Q Just prior to the signal being made, did you

see Anthony LaVecchia exit 125 East 18th Street?

A Yes, I did.

Q Where did he go upon existing?

A We were cruising by the corner just down the street from his store. He came across the street in front of the car to an automobile parked on the other side of the street.

Q What if anything did he do upon reaching the automobile?

A He opened the trunk of the automobile and I couldn't see what he was doing inside. We went on by to the other corner, across the intersection and then he closed the trunk and as I recall, he returned to the store.

Q At that point the arrests were effected?

A That's correct.

Q After he re-entered the store; is that correct?

A Right.

MR. DE PETRIS: I have nothing further of this witness, your Honor.

MR. LA ROSSA: May I have the material, please?

MR. DE PETRIS: It's one you already have from this morning.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q Agent Kierstead, did you place Mr. LaVecchia under arrest?

A No, I didn't.

Q Were you present when he was placed under arrest?

A I was in tfront of the store.

Q Did you see him being placed under arrest?

A Not -- no.

Q Do you know who placed him under arrest?

A I know the agents who were there. I don't know the particular one.

Q Did you search the premises on 18th Street?

A No, I did not.

Q Did you search any vehicles in the area?

A No.

Q What time did you observe Mr. LaVecchia in the street?

A It was about one or two minutes prior to the time he was arrested but I don't remember exactly what time of the day it was.

MR. LA ROSSA: I have no further questions of this witness.

Apparently he hasn't gotten --

THE COURT: Agent McIntosh is the one that searched the car. I thought we would need him.

Agent Satterlee apparently seized the $5 from LaVecchia.

MR. DE PETRIS: Then Agent McIntosh seized the $2,450 in the trunk.

THE COURT: Are either one of those available tomorrow?

MR. DE PETRIS: Yes, both available tomorrow morning.

THE COURT: I guess that's all we need from Agent Kierstead.

You don't want to ask anything?

MR. FISCHETTI: No, sir.

MR. LA ROSSA: May we in the interst of saving time, make the determination on whether the two agents who are going to be here tomorrow are the ones who placed Mr. LaVecchia under arrest?

I think that's an integral part of the issue that's going to be submitted to the Court.

MR. DE PETRIS: One of the two agents were there when the keys were obtained.

MR. LA ROSSA: In other words, these two will cover not only the arrest, the obtaining of the key

and the opening of the car as well.

MR. DE PETRIS: Yes.

THE COURT: Do you have special questions on voir dire when we pick the Jury tomorrow?

MR. DE PETRIS: None, your Honor.

MR. LA ROSSA: May I think about it overnight, just one or two, like the last time?

THE COURT: 10:00 o'clock tomorrow.

(Time noted: 4:35 p.m.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 73-CR-305

ANTHONY LA VECCHIA, EDWARD BOGIN, HERBERT KURSCHENOFF and NICHOLAS ANDRIOTIS, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 18, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

BURTON SULZER
OFFICIAL COURT OFFICIAL

Appearances:

DAVID TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: DAVID DePETRIS, ESQ.,
Assistant United States Attorney

JAMES LA ROSSA, ESQ.,
Attorney for the LaVecchia

RONALD FISCHETTI, ESQ.,
Attorney for the defendant Bogin

BARRY KRINSKY, ESQ.,
Attorney for the defendant Kurshenoff

SIDNEY SPARROW, ESQ.,
Attorney for the defendant Andriotis,

THE CLERK: Criminal cause for trial, United States vs. Anthony La Vecchia, Edward Bogin, Herbert Kurschenoff and Nicholas Andriotis.

THE COURT: Do you have anything better on the tapes this morning?

MR. DE PETRIS: I'm not going to play that first tape any more. We will work with the second tape.

I apologize for yesterday. The problem is with the amplification, when you amplify the tape it also amplifies all the background noise. But M have the second tape.

I don't know whether you want to hear the whole portion or just the portion which we are going to use at the trial.

THE COURT: I'd like to hear a little bit before that so I can hear it.

MR. DE PETRIS: Would you like to take the testimony first, or the tape?

THE COURT: You have witnesses here?

MR. DE PETRIS: Yes.

THE COURT: Let's put the witnesses on.

MR. DE PETRIS: The Government calls Agent McIntosh.

DALTON MCINTOSH, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Mr. Sparrow is here.

Where is your client?

MR. SPARROW: He is here. He is sitting out there since we felt during the hearings he's not particularly directly involved, sir.

THE COURT: Mr. Krinsky isn't here. I don't know whether Mr. Kurschenoff is affected by this testimony.

MR. DE PINNA: This testimony will not relate to him. It will only relate to February 15th.

THE COURT: We will go ahead.

MR. LA ROSA: Mr. Fischetti is before Judge Platt but his wishes is to go ahead, your Honor.

MR. SPARROW: I was going to ask your Honor, as yesterday during the course of these hearings, since they do not directly affect my client, would your Honor mind on occasion I attend to something --

THE COURT: I don't want to spend too long on audibility hearings. I want to get to the selection of a Jury.

MR. SPARROW: I will be here and available

within a minute.

DIRECT EXAMINATION

BY MR. DE FILIPPIS:

Q Mr. McIntosh, are you employed by the Secret Service?

A I am.

Q In what capacity?

A Special agent.

Q Directing your attention to February 15, 1973, were you and other agents of the Secret Service assigned to surveillance at 125 East 18th Street, in Manhattan?

A Yes, we were.

Q On that date at approximately 5:10 in the afternoon, did there come a time or shortly thereafter, when you entered 125 East 18th Street?

A Yes, sir, around 5:10.

MR. DA ROSA: Around what, I'm sorry.

THE WITNESS: Around 5:10.

Q Would you relate to the Court what transpired upon your entering that premises?

A As I entered I noticed approximately four to five other agents in the premises at that time. They were engaged in looking through the store. I assume they were searching the store.

I was given car keys by Agent Crovato, who was one of the supervisors at the scene, and told to search a 1969 Chrysler that was parked around the corner from the store.

Q Did you then proceed to the vehicle?

A Yes, I did.

Q What did you do?

A I searched the vehicle and in the trunk of the vehicle I found a bundle of genuine currency.

Q Did you find other items in the trunk also?

A There were other items, perfume; I believe there was also cigarette lighters, large quantities.

Q And were there any documents or papers of any kind?

A I don't recall at this time.

Q I see.

Now, after you received the -- after you took the money from the trunk, what if anything, did you do with it?

A I took the money back to the store with me and asked Agent Crovato what I was to do with the money. He told me to ttransport the money back to the New York field office and at this time I turned the money over to Agent Kramer.

MR. DE PETRIS: I have nothing further, your honor.

THE COURT: Mr. LaRossa.

MR. LA ROSSA: Yes, sir.

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q What was your supervisor's name, sir, that you mentioned?

A Crovato.

Q Cravoto?

A C-r-o-v-a-t-o, Crovato. He was one of the supervisors at the scene.

Q When did you arrive at 125 East 18th Street on February 15th?

A At approximately 5:10.

Q So you don't really know what occurred prior to the time that you entered the premises and Mr. LaVecchia was under arrest?

A That's correct.

Q He was in custody at that time, was he not?

A I assume that he was.

Q But did you see people in custody in the premises 125 East 18th Street when you entered?

A No, I didn't.

Q Do you know whether or not people were taken into custody at that premises? Do you now know?

A I don't know for a fact. I assume they were.

Q Have you ever read a report which indicated that people were taken into custody?

A No, I haven't.

Excuse me. Have I ever read a report or written a report?

Q Read.

A Read, yes, I have.

Q You now know, do you not, that other agents participating on that particular day placed Mr. LaVecchia and others into custody at 125 East 18th Street?

A I know it now. I didn't know it at the time.

Q As your sitting there now, you know it, do you not?

A Yes, sir.

Q Do you know where these keys came from, Agent McIntosh?

A No, I don't.

Q Do you know how they were obtained by Agent Crovato?

A Not directly.

Q Tell me the license plate number of this vehicle that you searched.

A I can't do that at this time, sir, no.

Q Can you tell me what color the car was?

A The car was a metallike blue, light blue.

Q Didyou just tell us it was a 1969 Chrysler?

A 1969 Chrysler.

Q Are you sure of that?

A Yes.

Q Could it have been a 1967 Chrysler?

A '69 Chrysler.

Q Do you know who owned that vehicle?

A No, I don't.

Q What did you remove from the trunk of the vehicle on that particular day?

A Well, with the exception of the genuine currency I found, I removed a pail, a washing pail that the money was in. We were searching the car for contraband primarily, so I -- the contents that were in the trunk of the car were removed.

As I said before, there were bottles of perfume, and I believe there were lighters also in the car so everything that was in the trunk was removed and placed back in the trunk.

(Continued on next page.)

Q By the way, were the items that you saw in the trunk, like cigarette lighters and perfume, the kind of items that would have been sold in the premises 125 East 18th Street?

A I didn't spend that much time in the premises but I believe they could have been.

Q It was a discount store of sorts?

A I believe it was.

Q How much genuine currency did you remove from that car?

A I didn't count the currency myself, but I believe it was approximately $2,500, somewhere in that general -- I can't say for a fact the exact amount.

Q And there is no notes that you can refresh your recollection with?

A No, no, there is not.

Q Is it your testimony that you only took $2,500 from that trunk?

A I can't say the exact amount that I took from trunk. I didn't count it at the time.

Q Was all the money that you took from the trunk in that pail that you described?

A Yes, it was.

Q Was it wrapped in one package?

A It was wrapped by a rubberband.

Q Did you examine the denominations of the bills?

A I believe I did. I can't say for certain.

Q Did you determine whether or not they were marked in any manner?

A At that time I didn't, no.

Q Do you know whether they were pre-recorded?

A I didn't --

Q In any manner?

A At that time I didn't.

Q Do you know?

A I do now.

Q Do you know whether or not you removed other currencies from that vehicle?

A I didn't, that I know of.

(Mr. Krinsky is now present.)

Q You do not?

A I didn't that I know of remove other currency from that vehicle.

Q The only thing you removed permanently from the vehicle was approximately $2,500 in money and a pail; is that correct?

A That's correct.

Q All the other items, you examined, put back into

the trunk and closed the trunk?

A That's correct.

Q Is that correct?

A Yes.

Q What did you do right after you closed the trunk, Agent Matthews?

A I took the money along with the pail, placed the money inside the pail, walked back to the store and told them what I had found.

At that time I was told to transport the money back to the New York field office, which I did, and turned it over to Agent Kramer.

Q Did you seize the vehicle?

A No.

Q Did you remove the vehicle from that particular street because of a safety factor of any reason?

A No, sir.

Q Was the vehicle parked on the street?

A Yes, sir.

Q Was it parked by the curb?

A No, sir.

Q Where was it parked?

A It was parked in the middle of the block.

Q Not next to a curb?

A No, sir. Oh, next to the curb, I'm sorry, yes,

sir.

Q It was parked where vehicle normall would park on that particular street?

A Yes, sir.

Q Was it creating a hazard in any way whatsoever?

A No, sir.

MR. DE PETRIS: Objection.

THE COURT: Overruled.

Q If I told you that you removed a lot more money than $2,500 from that trunk, would you state I was wrong?

A Yes, I would.

Q Are you the only one who removed the money from that trunk?

A Yes, I am.

Q Did you prepare a report on what you did that day?

A No, I didn't.

Q You never wrote out or dictated to anyone what you dod that day?

A No.

Q Have you ever seen a report which stated what you did that particular day, written by any other agent?

A Yes, I have.

Q Is this that report, sir?

I show you Government's Exhibit 3500-2. Is that the report that you are referring to?

THE COURT: Mr. Krinsky, is Mr. Kurschenoff here?

MR. KRINSKY: Yes, he is, your Honor.

THE COURT: All right.

THE WITNESS: Yes, it is.

BY MR. LA ROSSA:

Q Would you point out in that report, please, the portion that you are referrring to that states your activities subsequent to 5:10 on February 15, 1973?

A On page 6 of the report and it is the fourth paragraph from the bottom of the report.

"S.A. McIntosh found the remaining $2,450 in Government pre-recorded monies in the trunk of Anthony LaVecchia's automobile parked on East 18th Street, New York City."

Q Is that all in that report that refers to what you did, sir?

A Yes, it is, that's all.

Q Did you prepare an inventory on what you seized?

A No. The inventory was prepared in my presence.

I didn't do it directly.

Q I'm sorry.

A I believe it was prepared by a secretary.

Q Have you ever seen that?

A I did at the time. I haven't seen it for a while, quite a while.

Q Referring you to the last four pages of what is marked 3500-2, is that the inventory that you are referring to?

A I believe it is.

Q Does your signature appear on there?

A No, it doesn't.

Q That is the inventory you are referring to?

A I believe it is, yes.

Q Let me ask you this, sir, you know, do you not, that under your authority by virtue of being an agent of the United States Secret Service, that you are permitted to seize a vehicle that has been used for the transportation of contraband, don't you?

MR. DE PETRIS: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

Q And you knew that on the 15th day of February, 1973, did you not?

A Yes.

Q Were you told that that vehicle was used for the transportation of contraband?

A I wasn't told that, no.

Q Were you told to seize that vehicle?

A I wasn't told to seize the vehicle.

Q Do you know now whether that vehicle was seized?

A I know that it wasn't seized.

Q Is there any reference you can make to any report, sir, that would indicate what the year of this vehicle was or the identification of this vehicle, for example, 3500-2, is there any reference to the vehicle in that report?

A Not to my knowledge.

Q So as you are sitting there now, you could not actually identify this vehicle?

A At the time I knew that it was a '69 Chrysler.

Q But you have no idea what the identification number was, the license plate number or anything else?

A No.

Q Even as you sit there now?

A No.

Q Were you alone when you opened that trunk?

A When I opened the trunk, I was alone.

Q No other agents?

A There was another agent searching another part of the car.

Q Who was that?

A Agent Ryan.

Q Do you know whether he removed anything from the vehicle?

A Not to my knowledge.

Q Do you get a receipt for money that you turn over to another agent of any type, for example, that $2,500? Would you get a written receipt for that?

A No.

Q Do you get anything that establishes the fact, or is anything prepared to establish the fact that you turned in that money?

A Just the fact that the report was written, my name appeared in the report as recovering the money.

Q And as you sit there now, you are absolutely sure that the only thing you seized was $2,500?

A Yes, sir.

MR. LA ROSSA: I call upon the Government under their obligation under Brady against Maryland to state whether that testimony is accurate.

As far as the $2,500 is concerned, if they know --

MR. DE PETRIS: To the best of the Government's knowledge, it is accurate.

THE COURT: All right.

MR. LA ROSSA: I have no further questions.

THE COURT: All right. You can step down. Thank you.

Next witness.

(Witness excused.)

fls. (Continued on next page.)

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MR. DE PETRIS: Government calls Agent Satterlee.

D E N N I S S A T T E R L E E, called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

THE COURT: All right, Mr. DePetris.

Q Agent Satterlee, are you employed by the Secret Service?

A Yes, I am.

Q In what capacity?

A I am a special agent.

Q Directing your attention to February 15, 1973, were you assigned to surveil the location 125 E. 18th Street in Manhattan?

A Yes, I was, that's correct.

Q At approximately 5:10 did there come a time when you went to 125 E. 18th Street?

A Yes, sir, there did.

Q Would you relate to the Court what transpired upon your entering?

A Well, we entered the building and placed several people under arrest at that time.

Q Was Mr. LaVecchia, Anthony LaVecchia placed under arrest at that time?

A Yes, sir, he was.

Q Was he patted down at that time, frisked?

A Yes, he was.

Q Was anything recovered from him?

A Yes, sir, there was approximately three to four thousand dollars in currency recovered from him and the set of car keys that I recall offhand, that were recovered.

Q And did you recover that from him, sir?

A Yes, sir, I did.

Q Now, what did you do with the set of car keys?

A I turned the car keys over to another agent.

Q Was that Agent Cravato?

A Yes, it was.

Q And what did you do with the currency that was taken from the defendant?

A Well, eventually I turned the currency over to Special Agent Cramer.

Q Was that back in the New York field office?

A That's correct, right.

MR. DE PETRIS: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Satterlee, was it you that frisked Mr. LaVecchia?

A Yes, sir, it was.

Q Were you the one that placed him under arrest?

A Well, technically, yes.

Q Did you walk over to him and tell him he was under arrest?

A Yes, I did.

Q Did you frisk him for weapons?

A He was frisked after he was arrested.

We took all of his personal property from him.

Q Did you do that, did you frisk him for weapons?

A I searched him subsequent to his arrest.

Q Before searching him did you frisk him for weapons?

A No, I didn't.

Q Well, did anyone else do it?

A Not that I recall.

Q Mr. Satterlee, isn't that the proper procedure when you place someone under arrest to determine whether or not he's got a weapon on him?

A When we place someone under arrest we normally take all his personal property and until we return to the field office.

Q Don't you, for safety's sake, make a determination on a quick frisk to determine whether he's got a weapon or not?

A If we have the time we usually conduct more than a quick frisk.

Q Tell me what you did to Mr. LaVecchia, exactly.

A We walked in the store, placed him under arrest, told him he was under arrest, handcuffed him and searched his person.

Q What do you mean by "searched his person," did you turn his pockets inside out?

A I don't recall that I turned his pockets inside out, no.

Q Did you go into each pocket?

A Yes, I did.

Q Did you remove all of the contents of each pocket?

A I felt that I had, yes.

Q And this was subsequent to the time that he was placed in handcuffs and in custody?

A That's correct.

Q What didyou remove from his pockets?

A I recall that I removed the currency which I already mentioned, plus a set of car keys.

Q What else?

A I don't recall anything further that I took from him.

Q How much currency did you remove?

A I recall that it was approximately $3,000 to $4,000, very large.

Q Did you count it?

A I didn't, no.

Q Did you give it to someone to count?

A Yes.

Q Was it counted in front of you?

A No, sir.

Q Did you give Mr. LaVecchia a receipt for that money?

A No, sir, I didn't.

Q Do you know whether that money was returned to Mr. LaVecchia?

A No, sir, I don't.

Q The premises that you arrested Mr. LaVecchia in was a discount store, was it not?

A It was a store. I believe it was Beacon Discount, that's correct.

Q Were there a number of employees present?

A Inside the store there were approximately four or five people as I recall.

Q How many people were placed under arrest?

A I believe there were four people all toll placed

under arrest at that location.

Q How many of them are defendants in this case, do you know?

A One, I believe, sir.

Q Who did you give the keys to, Mr. Satterlee?

A Special Agent Cravato, from the Field Office.

Q Did you tell Special Agent Cravato that this vehicle was used for transportation of contraband?

A No, sir, I didn't.

Q Did you know whether that vehicle was being used for the transportation of contraband?

A No, sir.

Q Certainly, if it was, you would have had the right to seize it, would you not?

A Yes, sir, we would have.

Q So it is your testimony then, as you sit there now, Mr. Satterlee, that you can't give us the amount of currency that was in his pocket other than it was more than $3,000 and less than $4,000, or approximately that?

A That's correct, yes, sir.

Q And you'd never seen a report with the amount of money stated that was in his pocket?

A I don't recall that I have seen a report, no, sir.

Q Did you determine after placing him under arrest whether there were cash registers in there, in the premises?

A I don't recall that there were.

Q Did you see agents searching the discount store while you were searching Mr. LaVecchia?

A No, sir, I don't recall that.

Q How many agents were in the premises at that time?

A There were approximately five or six agents also there.

Q At the point where you were searching Mr. LaVecchia, all of the people were in custody that you wished to place in custody in that premises, isn't that right?

A I beg your pardon, could you repeat that question?

Q At the time you searched Mr. LaVecchia, all of the people were placed in custody that you or the other agents wished to place in custody, isn't that right, at the premises?

A Well, I don't feel that I am qualified to answer that. I was told to arrest Anthony LaVecchia. I didn't wish to arrest anyone else.

Q Did you see the other people in custody, as well?

A Yes, I did.

Q What happened after they were placed in custody, did you see agents of the Secret Service search the discount store?

A I recall that we took the prisoners outside to be transferred back to the field office.

Q Did you see agents turning over shelves?

A No, sir, I did not, to my recollection.

MR. LA ROSSA: Thank you, Mr. Satterlee.

THE COURT. Anything more?

MR. LA ROSSA: No.

MR. DE PETRIS: No.

THE COURT: You may step down.

(Witness excused.)

MR. DE PETRIS: The Government calls Agent Simon.

J O H N S I M O N, J.R., called as witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q You are employed by the Secret Service?

A Yes, I am.

Q In what capacity?

A Special Agent.

Q Directing your attention to February 15, 1973, did you on that occasion, on that date, see either

Anthony LaVecchia or Edward Bogan?

A Yes, I did. I saw Mr. LaVecchia on three occasions and Mr. Bogan on one occasion.

Q Did you ever see any of the two of them together?

A Yes, I did.

Q Where was that?

A That was in between 18th and 17th Street on Park Avenue South in Mr. LaVecchia's vehicle.

Q Would you explain to the Court how they came together, if you saw them come together?

A I was on a foot surveillance in the area of 125 E. 18th Street, when John McMillan broadcasted over the Kel kit he was wearing that Mr. Bogan was leaving the front of Mr. LaVecchia's store.

At this point myself and Agent Dodson followed Mr. Bogan to Park Avenue South and, as I said, between 18th and 17th Street, he answered Mr. LaVecchia's car. They had a brief conversation and the car departed.

Q Were you present at 125 E. 18th Street at the time of the execution of the arrest?

A I arrived shortly after the suspects were placed in custody.

Q Now, at the time of the arrest, or shortly after the arrest, were there other individuals in the store other than agents and the defendants who were in custody?

A Yes, there were several individuals milling outside in front of the store.

Q Had you seen any of these individuals during the course of your surveillance during that day?

A I believe so, yes.

MR. DE PETRIS: I have nothing further.

THE COURT: All right, Mr. LaRossa.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q When did you see Mr. Bogan and Mr. LaVecchia together, Agent Simon?

A That was approximately 3:55 p.m.

Q On the 15th of February, 1973?

A Yes.

Q On Park Avenue South between 17th and 18th Street?

A Yes.

Q Did you see Mr. Bogan enter that vehicle?

A No, I did not.

Q Did you see Mr. LaVecchia enter that vehicle?

A No, I did not see Mr. LaVecchia enter that vehicle.

Q When you observed the vehicle, were both individuals in that vehicle?

A Yes, they were.

Q Was there anyone else in the vehicle?

A No, there wasn't.

Q How long did you observe the two of them in that vehicle together?

A I would estimate the time span to be three to five minutes.

Q How far were you from that vehicle?

A As close as I am to you.

Q Could you see through the window?

A Yes, I could.

Q Did you see a pass from one defendant to the other of anything?

A No, I did not.

Q Did you hear any portions of the conversation?

A No, I did not.

Q After the three to five minutes, did Mr. Bogan leave the vehicle?

A I cannot answer that because there was an obstruction. A truck pulled up and when the truck left, the vehicle -- I saw the vehicle proceeding up Park Avenue South.

Q You don't know whether Mr. Bogan was in the vehicle at that time?

A No. I assume there was a least one individual

the driver.

Q You don't know which one of the two or both were in the vehicle at that time?

A No, I don't.

Q Is that the last time you saw that vehicle, that day, prior to the arrest?

A Yes, it was.

Q You said that you saw several individuals milling around outside of Beacon Discount that you had seen by virtue of your surveillance. Can you identify those individuals for us?

A I cannot.

Q Where did you see them?

A As I said, I was on foot surveillance and I passed near the store on several occasions and there were photographs taken of the surveillance and I then looked at the photographs and there were the individuals I had seen outside of the front of the store.

Q Do you have those photographs?

A Mr. DePetris has them.

Q Do you have a photograph of Mr. Bogan and Mr. LaVecchia together in that car?

A No, I do not.

Q Were you the case agent on this case?

A No, I wasn't.

Q Who was?

A Mr. Cramer.

Q Does that mean that Mr. Cramer would make specific decisions on when to arrest someone, for example?

A Normally yes, but it was an operation of such large size that we had supervisors in different areas.

Q Did you have a supervisor at Beacon at the time of the arrest?

A Yes, we did. We had two supervisors.

Q Who were they?

A Mr. Tulley and Mr. Cravato.

Q Am I correct in assuming that both are experienced agents in the Secret Service?

A Yes, they are.

Q Am I correct in assuming that both know that a vehicle that has been used to transport contraband may be seized?

A Yes, sir you would.

MR. DE PETRIS: Objection.

THE COURT: Overruled.

Q You knew that as well, didn't you?

A Yes, I did.

Q Did you or Mr. Tulley or Mr. Cravato or any

other special agent dictate the seizure of that vehicle on the 15th?

A To my knowledge, no.

Q Is there any question in your mind, sir, that that vehicle was not seized?

A I know it was not seized.

MR. LA ROSSA: I have nothing further.

MR. DE PETRIS: Nothing further.

THE COURT: Anything more?

MR. DE PETRIS: No, sir, your Honor.

(Witness excused.)

THE COURT: Mr. La Rossa, any testimony?

MR. LA ROSSA: I think maybe we can stipulate to a few facts in evidence, if I may speak to Mr. DePetris for a moment?

(Counsel confer.)

MR. LA ROSSA: The first stipulation, may it please the Court, is that no warrant was obtained nor was one sought prior to the seizures discussed.

MR. DE PETRIS: Correct.

MR. LA ROSSA: The second stipulation, may it please the Court, is that the vehicle was not seized.

The third stipulation, may it please the Court, is there was no consent by Mr. LaVecchia to search that vehicle.

(continued next page.)

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MR. LA ROSSA: Just one more.

I'm trying to save some time.

THE COURT: All right.

MR. LA ROSSA: The last stipulation, may it please the Court, is subsequent to the arrest of Mr. LaVecchia, and the search of the vehicle, on 18th Street a formal application was made by agents of the Secret Service, to a Federal judge, for the issuance of a search warrant with respect to the Lafayette Street premises of Beacon Printing.

MR. DE PETRIS: Although the individual who made the application for the search warrant was not present and was already in route to obtain the search warrant for Lafayette at the time the vehicle was searched.

MR. LA ROSSA: The defendant rests, as far as any evidence being introduced at this hearing.

THE COURT: Now, among the cases Mr. DePetris cited yesterday is the Court of Appeals decision in Francolino in 367 F 2nd at 1013, which is an opinion of Judge Friendly's, on a situation very much like this, and suppose you consider this in your argument, Mr. LaRossa.

MR. LA ROSSA: Judge, I know the Francolino case very well. I most respectfully submit that it

really is not akin to this.

In the first place if my memory is correct, in the Francolino case, Mrs. Francolino --

THE COURT: Mrs. Francolino, yes.

MR. LA ROSSA: Is observed passing counterfeit bills at a discount store, somewhere in Brooklyn. I think out in -- out in the Floyd Bennett Field shopping center of some sort.

THE COURT: Yes.

MR. LA ROSSA: When employees of the shopping center attempt to overtake her, after passing the bills, they take the identification number of the vehicle and the make and the model of the vehicle and this is transmitted to the authorities.

At the time of the arrest of Mrs. Francolino, the vehicle is parked in a driveway on the premises adjacent to the house. Not on the street some blocks away from the place of the arrest.

I think Francolino and I -- may it please the Court, your Honor, the Francolino case has been cited for a number of varying principles over the years, but I don't believe that our Court of Appeals has ever extended it beyond its facts. I might be wrong on that, but I really don't know of any decision where our Court of Appeals has said based upon Francolino,

we would allow the search of a vehicle indiscriminately after an arrest. I don't think that's what the case held and I think it's limited to its particular facts, one, that the vehicle was used for the transportation of money.

Your Honor will note here that during --

THE COURT: No. The question was whether the agent had probable cause to believe that it had been used in violation of the statute.

MR. LA ROSSA. There is nothing here, nothing in our hearing that in any way could give any agent any probable cause that that vehicle was used for the transportation of money.

In the Francolino case, it was obvious that Mrs. Francolino exited a vehicle, passed a number of counterfeit bills and to escape ran back into the car and took off in the same vehicle.

THE COURT. We have some testimony that Mr. -- that around the time of the transaction on counterfeit, Mr. LaVecchia opened the trunk of the vehicle.

MR. LA ROSSA: Yes, sir. But at the time that he -- at the time it's suggested that he opened the trunk of the vehicle, you are talking about Agent Cramer and Mr. McMillan being at Penn Central and recovering

the alleged counterfeit money. So his opening of that vehicle's trunk, unless my recollection of the facts is incorrect, his opening of the vehicle's trunk is immediately prior to the arrest, according to the testimony of the agents which has been placed at 5:10.

Your Honor will note that Mr. Cramer testified that he recovered the counterfeit money before giving the radio signal to place the defendants under arrest.

Therefore, the seizure of the counterfeit money was made prior to the time Mr. LaVecchia is observed opening the trunk, as your Honor suggested a moment ago. So, therefore, -- and then closes the trunk, I might add, and the testimony is that no one -- he's not seen removing anything from the trunk.

Thereafter, your Honor will note a search of the vehicle is made and no counterfeit money is found. A search of Beacon is made, the discount store, and -- well, the evidence --

THE COURT: A search cannot be sustained because it is successful. I suppose it cannot be suppressed because it does not turn up counterfeit.

MR. LA ROSSA: Of course not; but my point is that not only is there nothing in the testimony that would give one probable cause, but I suggest that the testimony tends to suggest that the vehicle wasn't used for the transportation of counterfeit

money. There is nothing within the evidentiary hearing per se that would give your HOnor any reasonable cause to believe that this vehicle was used for the transportation of counterfeit money. That's the distinction in Francolino, number one.

Number two, I submit to you that the fact that the Francolino vehicle is parked in a driveway adjacent to the home, as I recall -- I think the decision stated then that the driveway was adjacent to the home and the vehicle was pulled up in such a manner so that when you exited the house, it was right there.

I think those facts are a far cry from a vehicle being parked on a street other than where the arrest was made.

THE COURT: Judge Friendly cited Carol and Preston and James, where I don't think the cars were that close.

MR. LA ROSSA: No, but, you see, there is another factor involved. I'm glad you brought that up. May I respond to that?

THE COURT: Yes.

MR. LA ROSSA: Carol, Brinigar and all those cases are the legion of old cases that refer to moving vehicles, and the Supreme Court consistently

holding that when you have a moving vehicle, the problem of its -- of its being moved, is always the issue on whether or not the vehicle should be searched.

Here you have a different situation. The Secret Service arrests Mr. LaVecchia, seized the vehicle, as far as the keys are concerned. The vehicle is within their cite.

Therefore, it can be placed in the same kind of custody that they placed the Lafayette Street premises in.

The stipulation before the Court is that an agent at this time is on his way to the courthouse, to Southern District of New York, to obtain a search warrant, to search the premises on Lafayette Street.

Certainly he's in radio contact with the other agents, who could have said, "Just a moment, when you go up to see that Judge, by the way, we have reasonable cause to believe that this Chrysler was involved in this crime. Therefore, please ask the judicial authority to include the car as well."

They didn't do that and this -- this isn't Carol or Brinigar or Preston or Cooper, where we're talking about a vehicle that's moving, that's being used in a crime, that's the subject of a vehicle and traffic violation. That's the subject of seizure.

That's the last item that I asked your HOnor to look at.

Because we're dealing with nothing but experienced agents in this case, who know that if they have probable cause, and I might suggest to the Court, that under the seizure provisions of the United States Treasury and the United States Customs, they need only have a preponderance of evidence to determine whether the seizure is sufficient or not. Not beyond a reasonable doubt, as they do here in a criminal case.

So none of these agents saw fit to seize the vehicle that's the subject of the search, and that's all they need. The same basis that provides for the obtaining of a search warrant or the use of a search would provide for the seizure of the vehicle.

Each of these agents stated that they knew that the seizure provisions under the United States Treasury Code, and none of them saw fit to seize this vehicle, so I suggest to the Court that it was a search based upon nothing more than a good investigative tactic, but not based upon any probable cause, number one, and not based upon any legal right.

THE COURT: All right.

Mr. DePetris.

MR. DE PETRIS: Yes.

Your Honor, first if I can run through the factual circumstances which have been brought out at this hearing, the testimony is that the -- that Mr. LaVecchia left the presence of Mr. Bogan and at that point he was observed going to Mr. Bogan's -- the printing company at 270 Lafayette Street.

Thereafter, then he was observed meeting with Mr. Bogan in his vehicle, and a short time thereafter Mr. McMillan and Mr. LaVecchia proceed to a location where Mr. LaVecchia is observed making a telephone call, and that he leaves Mr. McMillan off and Special Agent Cramer and Mr. McMillan go to Penn Station and obtain the counterfeit money.

NOw, Agent Cramer testified that based on his experience, many times when an individual transacts -- has counterfeit transactions, they have a larger amount of money than the initial $25,000 -- than the initial purchase which is to be made.

In addition, we have the meeting between Mr. LaVecchia and Mr. Bogan, after Mr. Bogan had been to the print shop.

Now, the search warrant was obtained for the print shop because that was where they believed the plant was.

Now, at the time a search -- this search, the

fact that the car was not seized, doesn't mean that they didn't have probable cause or reason to believe that the vehicle was used to transport counterfeit money.

When Mr. LaVecchia dropped Mr. McMillan off, he proceeded back to Beacon Discount Sales. When -- just prior to Mr. Cramer giving the signal to make the arrest, Mr. LaVecchia is observed leaving Beacon Discount Sales, walking out to his vehicle, opening the trunk and closing the trunk.

The Government would submit that on the basis of all those facts, the agent had reason to believe or probable cause to believe that their may be additional contraband in that vehicle, and for that reason, Francolino would control.

MR. LA ROSSA: May I just respond to that last statement?

THE COURT: Yes.

MR. LA ROSSA: Because I don't know whether Mr. DePetris ment that or not.

What he said is the facts then do not obviate the possibility that the car was not being used to transfer contraband.

May it please the Court, I don't think that's the way your Honor can make the judicial decision on whether that search is proper.

There doesn't have to be a ruling out of every possibility that the vehicle was being used for the transportation of counterfeit money, which I don't think he ment, but he said.

Rather, that the agents had probable cause to believe that it was being used.

None of the facts here -- the underlying facts support that proposition.

Without obviously arguing on and on, I think your Honor has the point of Mr. LaVecchia's argument.

THE COURT: Well, I want to study the cases a little more. I will reserve decision and decide it before we get to the openings.

MR. LA ROSSA: Yes, sir.

(continued next page.)

THE COURT: Let's hear the tape now.

MR. DE PETRIS: Would you mark this.

THE CLERK: Government Exhibit 4, partial transcript of tape of 2/15/73, marked for identification.

(So marked.)

MR. DE PETRIS: Your Honor. that's the portion which the Government intends to use. Now, I have a full transcript which is not a corrected copy. But it has all of the words. Just some of the names are wrong.

If your Honor would like to use this, so we can start a little before -- before the portions the Government intends to use?

THE COURT: All right.

Do you have a copy of that for Mr.LaRossa?

MR. DE PETRIS: He already has a copy.

THE COURT: All right.

MR. DE PETRIS: We'll be starting, approximately in here somewhere. That's page A-10. Three-quarters of the way down.

MR. LA ROSSA: Can you tell me where you are goir to start?

MR. DE PETRIS: Yes.

Page A-10.

2

MR. LA ROSSA: A-10.

MR. DE PETRIS: A-10.

MR. LA ROSSA: May I sit down?

THE COURT: Yes. Surely.

(Tape played in open court.)

MR. DE PETRIS: That was the portion, your Honor.

THE COURT: Yes. Give this back to MR. DePetris, please.

Mr. LaRossa, that was an intelligible excerpt, I thought.

MR. LA ROSSA: May it please the Court --

THE COURT: Subject to identifying the voices, it would seem to me that it is audible.

MR. LA ROSSA: I refer your Honor to U. S. against Elaine Bryant, decided by the U. S. Court of Appeals, on June 4, 1973, the Second Circuit, where the Court states that you must make a determination as to whether or not substantial portions of the tape were inaudible, to determine whether that tape can go to the jury.

I submit to you that listening to a portion such as Mr. De Petris just played to you does not satisfy the requirements of Bryant and I am not stipulating that this tape is audible. I submit to

3 you that too many portions of the tape are inaudible, substantial portions, to permit you to rule on the audibility of the small portion that Mr. DePetris wishes to play.

I think Mr. DePetris told us that this tape is approximately an hour.

Am I correct?

MR. DE PETRIS: Approximately.

THE COURT: Yes.

MR. LA ROSSA: And I submit to the Court that that playing, that your Honor just heard, could not have been more than a few moments. A few minutes.

THE COURT: Well, are there material in the rest of the tape that you think are essential to understand or to explain this part of it?

MR. LA ROSSA: Well, the trouble is we don't know the answer to that. There are so many -- there are so many substantial --

THE COURT: If you look at that transcript again.

MR. LA ROSSA: May I also cite the Monroe v. the United States Case, its 234 Fed. 2nd. at 55, which refers to the substantial portions that are unintelligible. Recording -- rendering recording untrustworthy and therefore inadmissible.

MR. DE PETRIS: Your Honor, one of the problems with this -- with this particular tape is that there is discussion between Mr. LaVecchia and Mr. McMillan during the course of this entire tape, of several other types of illegal activity.

That is one of the reasons why the Government does not intend to offer the entire tape in its direct case.

THE COURT: What is all this talk about General Motors and cars and trucks?

MR. DE PETRIS: That's just general conversation, your Honor, that portion.

THE COURT: Well, it's not just general conversation. They are talking about some specific cars, aren't they?

MR. DE PETRIS: Yes. But it's a discussion about the problems the different people who are there, having with different types of companies; General Motors, Chrysler, I believe and others. That is the transcript of the entire tape.

THE COURT: What is the rest? Something about pills? Are those supposed to be illegal pills?

MR. DE PETRIS: Yes. There are some photographs of a purchase of pills made in front of the building that day.

THE COURT: Well, let me get back to my question, Mr. LaRossa.

Are there other portions of this tape that you think would have to be played and transcribed accurately in order to cast some light on the part that Mr. DePetris wants to use?

MR. LA ROSSA: We believe that the unintelligible portions of this tape which are so substantial are such that if your Honor could, in effect, clear them of the static and listen to the tape in its entirety if we had that kind of a mechanical operation, and permit this, you would find that there would be an adequate and complete explanation for every conversation.

However, we are not permitted to do that and based upon the decisions that I submit are binding upon this Court, the substantial portions of the unintelligible tape, I submit make the entire tape untrustworthy.

And the fact that your Honor has been given a transcript to read of the portions of the tape that the Government submits are intelligible, I do not believe satisfies the problem that the Government must overcome. That being that substantial portions of the tape are unintelligible.

Therefore, the tape is untrustworthy.

THE COURT: What's the explanation you say they give?

MR. LA ROSSA: Your Honor, I don't think that I can give the explanation at this time. I say that most respectfully. I think your Honor is aware that Mr. LaVecchia cannot be at this time put into a position where he must advance a defense, or at any time.

I say that with the greatest of respect for the question. I don't mean it to be disrespectful.

THE COURT: No. But you have this rough transcript. YOu can tell me from that whether it gives some other explanation than --

MR. LA ROSSA: We do not accept the accuracy of the transcript before the Court. That's the next issue that we are going to have to deal with, I think, your Honor.

You see, initially we do not accept the trustworthiness of the transcription.

There are two separate factors that I am asking your Honor to determine; one is trustworthiness of the audibility of the tape as a whole and two, we will not stipulate to the accuracy of the transcript.

In that respect, may it please the Court, I refer your Honor to a decision on May 16, 1974, by

Chief Judge Mishler of this court, in U. S. v. Marvin Little and James Small, 74 CR 74, wherein Judge Mishler in a written opinion stated"the defendants decline to stipulate to the accuracy of the remainder of Exhibits 4A and 5A,"which were transcripts, these transcripts may not be placed before the jury. U. S. v. Bryant, which I gave your Honor the date of, the decision of the U. S. Court of Appeals, decided June 4, 1973, in an opinion written by Circuit Judge Jim Timbers.

(continued next page.)

1 THE COURT: Well, the Bryant case I remember because I have had to consider it on other occasions.

MR. DE PETRIS: The Bryant case does not specifically state that where the defendant does not stipulate to the accuracy of the transcript, the transcript may not be used.

MR. LA ROSSA: Apparently, Judge -- Chief Judge Mishler believes it does, as I do.

Would you like to see the opinion?

THE COURT: Do you have a copy of his memorandum?

MR. LA ROSSA: Yes, your Honor.

May we mark this?

THE COURT: This would seem to me to support using Government Exhibit 4, because Judge Mishler says the first 20 or 30- minute segment is blank, inaudible or irrelevant. The portion running from page 2 of the transcript to page 4 is audible and therefore admissible where indicated on the transcript.

MR. LA ROSSA: I think you have to keep reading on though, your Honor.

THE COURT: Similarly, the portion beginning on 8 -- continuing to page 10 is admissible. The transcrips can't be used because the defendants decline to stipulate as to the remainder of the exhibit.

MR. LA ROSSA: Every exhibit that the defendants refused to stipulate to in that case was not submitted to the Jury.

MR. KRINSKY: Your Honor, if I might shed some light?

That was a case that I had in front of Judge Mishler and what happened in that case was that there were certain tapes, telephone tapes, which the defense counsel in agreement with the Government prior to trial, had certain transcripts, and we stipulated were accurate, with certain minor variations.

However, there then was -- it was one tape which was a Kel set transmission which was similar to the issue in this case, and I took the position, as did the other defense counsel in that particular case, that the overall tape itself was inaudible and unintelligible.

The Government prepared a transcript. We refused to stipulate to the accuracy of the transcript. Judge Mishler then directed us to say -- similar to what your Honor in fact has just asked Mr. LaRossa to do: Well, what is your version of what the tape says. And it was my position at that time that to force defense counsel to come up with another version

3 of what the tape is is in effect to ask defense counsel to waive the argument that the tape is in and of itself unintelligible and inaudible.

Judge Mishler then said: "Well, besically I agree, after reconsideration, and I can't force you to come up with your own version of what the tape says, and if you won't stipulate to the transcripts or the accuracy of the transcripts, then the transcripts cannot go in front of the Jury."

Judge Mishrl did however recall, as your Honor indicates, that although substantial portions of the tape was inaudible, that certain portions were audible, over our objection, and therefore could be played to the Jury without the aid of any transcript.

However, there is a significant difference. In that case the inaudible portions that were referred to by and large approximately 30 minutes of it were conversations and music at a party prior to the actual relevant incident.

Whathappened there was that there was a party going on at the informant's apartment and for 30 minutes there was music and party sounds and then the informant allegedly left with one of the defendants in that case, the defendant whom I represented, and

4 once they left the premises, much of the remainder of the tape was a lot clearer, at least the Government argued, than the previous portion.

Now, I don't know if that is the case in this particular --

THE COURT: What is your point? That the tape should be played without a transcript?

MR. KRINSKY: No. My point in that case --

THE COURT: No. Here. Today.

MR. KRINSKY: I don't take any position, your Honor, as I don't represent --

MR. DE ROSA: Mine is --

THE COURT: Your point is the tape can be played without a transcript?

MR. DE ROSA: No, sir.

First I say, your Honor can't permit the playing of the tape because some portions of it are inaudible, that it is untrustworthy.

However --

THE COURT: Wait a minute. What does that mean, because -- because one part is inaudible the other part is untrustworthy?

MR. DE ROSA: If so much of the tape is inaudible, so much -- a substantial portion of it renders the tape untrustworthy and therefore can't

be played to the Jury. That's my legal position.

As to the --

THE COURT: How do you establish that?

MR. LA ROSSA: I establish it by discussion in the Bryant case. I refer your Honor to Monroe against the United States. Monroe against the United States stated, unless the unintelligible portions are so substantial as to render the recording, as a whole, untrustworthy, the recording is admissible, and this decision should be left to the sound discretion of the Judge.

I submit to you that in this instance the unintelligible portions are so substantial as to render the recording as a whole untrustworthy, removing, may it please the Court, most respectfully, the decision from your sole discretion -- from your sound discretion, and therefore, your Honor must rule against its admissibility.

What I am suggesting to you is that if your Honor rules against me, as to that point, then the transcript comes into being.

THE COURT: Then what?

MR. LA ROSSA: Then the issue on the transcript comes into being.

MR. DE PETRIS: Your Honor, apparently in

United States against Carson, which is cited in the footnote in the Bryant opinion, the Court in Bryant said that it might be appropriate to -- to admit a transcript to assist the Jury in comprehending a tape recording. In such case, it would be advisable to follow the procedure approved in United States against Caron, and that procedure is the procedure whereby the Government submitted a transcript and the defense counsel submitted a transcript and where there was a variance between the language, both transcripts were submitted to the Jury.

And I -- Carson is at 464 Fed. 2d, 424.

THE COURT: I'm not sure the Bryant case says that the defendant should keep -- can keep out an accurate transcript by refusing to stipulate as to its accuracy.

Unless you can show me some prejudice from omitting the other part of the tape and using only the part that the Government thinks is relevant, it seems to me that it is proper to use it.

MR. LA ROSSA: Your Honor, I am suggesting that the tape is inaudible as a whole. I assume your Honor is ruling against --

THE COURT: It is not inaudible as a whole. It is certainly audible as to the part that we heard.

7 MR. LA ROSSA: May the record reflect, your Honor, that you heard a portion of this tape as advanced by the Government and no other portion.

In addition to that, your Honor --

THE COURT: I'll hear the rest of it at 4:30. I'll hear the whole tape at 4:30.

Let's take a five-minute recess and bring up a Jury.

(Recess taken.)

(Continued on next page.)

1

A F T E R N O O N S E S S I O N

THE COURT: All right, gentlemen.

With respect to the seizure of the money in the car, it seems to me that Mr. LaVecchia had enough connection with the counterfeit transaction so that there was reasonable cause to believe that there was additional counterfeit in the car. And that being so, not only the Frankalino case, but the Supreme Court's opinion in Chambers against Marone, which was a little later, said in 90 Supreme Court at 1981, "There is little to choose in terms of practice consequences between an immediate search without a warrant and the car immobilization until a warrant is obtained. The same consequences may not follow where there is unforeseeable cause to search a house, but for the purpose of the Fourth Amendment, there is a constitutional difference between houses and cars."

So I think the search of the car should be sustained and I deny the motion to suppress.

With respect to the tapes, I think I must probably listen to the whole tape to see whether there is anything in the early part that casts doubt on the trustworthiness of the tapes. I think I didn't hear any of this tape yesterday, did I?

MR. DE PETRIS: That's correct.

OPINION OF JUDGE STEWART
ON MOTION TO SUPPRESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-against-

73 Cr. 286

EDWARD BOGAN and ANTHONY
LA VECCHIA,

Defendants.
----------X

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

Defendants Bogan and La Vecchia move to suppress at trial, pursuant to Rule 41(e), Federal Rules of Criminal Procedure, the fruits of a search of the premises known as Beacon Printing and Beacon Discount Sales at 270 Lafayette Street, New York City, pursuant to a search warrant issued by United States Magistrate Jacobs on February 15, 1973. The sole question on this motion is whether the affidavit of Secret Service Agent Tully on which the search warrant was based contained sufficient facts from which the Magistrate could independently find that probable cause existed to believe that a crime had been committed and that evidence of that crime would be found on

the premises described in the warrant. Since we find that Agent Tully's affidavit contained sufficient facts to permit such a determination, we deny defendants' motion.

The following facts are set out in the Tully affidavit, and are not seriously disputed.

1. The affiant was informed by one McMillan of prior dealings in counterfeit money with defendant LaVecchia and a man he (McMillan) later came to know as defendant Bogan.

2. McMillan also informed the affiant that LaVecchia operated a business known as Beacon Discount Sales on the second floor of 270 Lafayette Street, New York City.[1/]

1/ Defendants dispute the affiant's contention that Dun & Bradstreet reports independently indicated that Bogan and La Vecchia were co-partners in a business operating out of the second floor of 270 Lafayette Street. They have submitted Dun & Bradstreet reports which indicate that only defendant Bogan owned such a business. For the purposes of this motion, we do not find this discrepancy crucial, and will assume that only Bogan was the technical legal owner of this business. LaVecchia's dealings with Bogan, both those personally observed by the affiant and other Secret Service agents, and as stated by the informant McMillan; and LaVecchia's entry into 270 Lafayette Street shortly before the counterfeit money was passed, see infra, are facts from which the magistrate could reasonably connect defendant LaVecchia and the premises searched. Bogan's connection with the transaction, and with the premises at 270 Lafayette Street, as outlined in the affidavit, are not seriously put in issue.

Any possible misrepresentations in the affidavit with re-

(cont'd next page)

3. Two days prior to the search, the affiant had McMillan arrange a purchase of counterfeit money from defendant LaVecchia.

4. On February 15, 1973, the affiant and other Secret Service agents observed and overheard (through a transmitter carried by McMillan), a series of actions and conversations between Bogan, LaVecchia and McMillan which culminated in the sale of counterfeit money by LaVecchia to McMillan. During these transactions, defendant LaVecchia was seen by Secret Service agents entering and leaving 270 Lafayette Street. Defendant Bogan was overheard by the affiant asking where "Anthony" was, and upon being told that he went to "your [Bogan's] place", placing a phone call to "Anthony".2/ During this call, McMillan informed that Bogan said, "the package is already there, I've got the key. I'll meet you". The sale

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1/ (cont'd) spect to the Dun & Bradstreet reports are therefore immaterial. Also, there is no showing at all that any were intentional. United States v. Carmichael, _____F.2d_____, 14 Cr. L. Rep. 2128 (7th Cir. 1973); See United States v. Gillette, 383 F.2d 843, 848 (2d Cir. 1967).

2/ In the context of the transaction, any inference other than that "Anthony" was defendant Anthony LaVecchia defies reason. It would also be quite reasonable to infer that Bogan was calling LaVecchia at 270 Lafayette Street.

of counterfeit money was shortly thereafter completed by La Vecchia handing McMillan a key to a locker containing the counterfeit money.

As summarized, the affidavit clearly meets the tests for sufficiency for a probable cause finding established by the Supreme Court in Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). Both the credibility and reliability of the informant McMillan, and the occurrance of the acts as to which he informed are independently corroborated by Secret Service surveillance and investigation. Among those corroborative facts stated in the affidavit are the facts that the informant, under government supervision, control and surveillance, arranged to and did carry out a transaction for the purchase of counterfeit money which directly involved, albeit at different intervals, both defendants; that a Secret Service agent had previously observed printing presses and paraphernalia on the premises on the second floor of 270 Lafayette Street; and that Dun & Bradstreet reports confirmed that at least one of the defendants observed in the transaction on February 15, 1973, Edward Bogan, owned a printing business which was located on the premises searched.[3/]

3/ See note 1 supra.

In addition, the underlying bases for both McMillan's and the affiant's allegations are set forth in detail in the affidavit.

We conclude by underscoring that the standard for determining the sufficiency of an affidavit for a search warrant is not one of certainty, but of probability. Brinegar v. United States, 338 U.S. 160, 175 (1949); Aguilar v. Texas, supra. We could not conclude, for example, that either defendant Bogan or LaVecchia was in fact involved in the February 15, 1973 transaction. We need only find, as we do, that the facts and circumstances set out in detail in Agent Tully's affidavit are sufficient to support a magistrate's independent finding that there was probable cause to believe that a crime had been committed, and that evidence of that crime could be found on the second floor of 270 Lafayette Street.

Defendants' motions are denied.

SO ORDERED.

United States District Judge

Dated: New York, N. Y.
December 6, 1973.

ROBERT L. BALL, a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Ball, by whom are you employed?

A United States Secret Service.

Q Where are your headquarters?

A In Washington, D.C.

Q Is that where you are stationed?

A Yes.

Q How long have you been employed by the United States Secret Service?

A Approximately six years.

Q What is your official title?

A I am a fingerprint specialist.

Q What are your duties as a fingerprint specialist?

A My duties consist of comparing one impression with the other impression to determine if they were made by the same fingerprint or palm print.

These comparisons may be made between two ink prints, between ink and latent prints, or between two latent prints.

I also examine evidence submitted to our laboratory by Secret Service agents assigned to the various field offices in the United States to determine if any latent print can be developed on these items if they do or can be developed I will compare these latent prints with ink prints submitted to our office of suspects in the case.

I report my findings to the agent in the field and I will testify to my findings in court if requested.

Q What special training have you received in fingerprint identification?

MR. SHARGEL: I will stipulate he is a fingerprint expert.

MR. DE PETRIS: I believe the jury should know his qualifications.

THE COURT: If it is brief I will proceed in spite of the stipulation.

THE WITNESS: I was employed in fingerprint work since September of 1955. Twelve and a half years with the Federal Bureau of Investigation in their fingerprint section and six and a half years with the United States Secret Service in their identification branch.

Q Agent Ball, what is a latent fingerprint?

A A latent fingerprint is the markings made by

oily matter present on the fingers when you touch your face or hair perspiration exudes from the fingers and if you touch something such as butter or something with grease or other matter that attaches to your fingers. And if you touch an object this leaves a print, what we call a latent print. Sometimes they are visible to the naked eye and other times they are developed through the use of chemicals or other means.

Q What is the ink fingerprint?

A The recording of the ridge detail that is part of the fingers for the palm or side. We apply ink to the ridges and apply the fingers to a card, usually an eight by eight fingerprint card. We usually use black printers ink to do this.

Q Mr. Ball, what are the basic factors in the use of fingerprints as a means of identification?

A The basic factors are that fingerprints are permanent, and every finger of every person bears a ridge arrangement on that finger that is unique and not duplicated on any other finger. And barring a case of an accident or surgical removal this arrangement is permanent for the life of that individual and there until decomposition of the skin after death.

Q What methods are employed to develop latent

fingerprints?

A Several methods. One method we use in the laboratory is the nin-hydrin method. This is a chemical reaction to the amino acids or protein in the perspiration. When the chemical comes in contact with the impression of the fingerprint, if it contains amino acids it turns a reddish or purplish color leaving the outline of the ridge detail.

There is the silver nitrate method which is a reaction with the salt and the perspiration; and we also use various powders on non-porous objects such as glass, plastic, certain metals.

Q Mr. Ball, how are fingerprints compared and identification affected from the comparison?

A Portions of the finger ridges are broken and non-continuous forming what we call ridge characteristics. And fingerprints are compared and identifications are made by noting these ridge characteristics in one fingerprint and looking for the same ridge characteristics in the same relative position in another fingerprint. And if enough of these ridge characteristics appear in the two you can say a fingerprint identification has been made.

Q Mr. Ball, I would ask you to step down here and examine these exhibits down here to determine if these are exhibits you have examined from your headquarters in

Washington, D.C.?

A May I step down, your Honor?

THE COURT: Yes.

MR. DE PETRIS: At this time, let the record indicate that the witness is examining Government's Exhibits 15 through 18. The contents of those exhibits.

Now, just Exhibit, Government's Exhibit 11 and 12.

THE WITNESS: The items in the boxes which are on the floor from Exhibits 14, 15, 16, 17, 18, and 11 and 12, and the items in that plastic bag --

MR. DE PETRIS: Government's Exhibit 45.

THE WITNESS: Were examined by me or under my direction.

Q Mr. Ball, upon your examination did you find any latent fingerprints in any of these boxes which you have examined?

A Yes, sir, I did.

Q Perhaps if you did it one box at a time, it would be easier.

Did you find any fingerprints within the contents of Government's Exhibit 11?

A Yes, sir, I did.

Q Where did you first see that exhibit?

A My headquarters in my laboratory in Washington, D.C.

Q Did you conduct an examination of that exhibit for fingerprints, latent fingerprints?

A Yes, sir, I did.

Q What method did you use in examination of Government's Exhibit 11?

A I used a black fingerprint powder.

Q Did you identify or find any latent fingerprints upon examination of that?

A Yes, on one of the offset plates I did develop a latent print.

Q I show you Government's Exhibit 39 in evidence and I ask you if you recognize that exhibit?

A Yes, sir, I do.

(continued next page)

PM

Q When did you first see that?

A At my headquarters in Washington, D.C.

Q And how did you determine that, from your initials on the card?

A Yes, sir, my initials appear on the back of the Exhibit.

Q Mr. Ball, did you make a comparison of the latent fingerprint developed on Government's Exhibit 11, with the fingerprint impressions that appear on Government's Exhibit 39?

A Yes, sir, I did.

Q And what is your opinion after making that comparison?

A I formed the opinion that a latent print which I developed on a portion of Government's Exhibit number 11, this portion being an offset plate, I formed the opinion that a latent fingerprint which I developed in the area, which I am now indicating, and the ink impression appearing in the right middle finger block of Government's Exhibit number 39, which is a fingerprint card bearing the name of Edward Bogin, I formed the opinion that these two prints were made by one and the same finger.

MR. DE PETRIS: Could I have this separately marked as 11-A?

THE COURT: Yes.

THE CLERK: So marked, as Government's Exhibit 11-A.

BY MR. DE PETRIS:

Q Were any other fingerprints found in Government's Exhibit 11, that is, in that envelope there?

A Oh, no, sir, not in this envelope.

I thought you were referring to the box.

Q I show you Government's Exhibit 12 and ask if you found any latent fingerprints which are identifiable within that Exhibit?

A Yes, sir, I did.

Q And did you use the same methods for raising the latent fingerprints?

A On this Exhibit, sir, I used fingerprint powder, and also the inhydrin.

Q Would you explain what the inhydrin method is?

A That is a chemical we use on porous objects such as paper because it can penetrate into the paper, and this reacts with the amino acid or the protein in the perspiration.

Q Did you make a comparison of the latent fingerprint which you found in Government's Exhibit 12 with the fingerprint card that you have?

A Yes, sir, I did.

Q And that is Government's Exhibit 39?

A Yes, sir.

Q What opinion do you have after making that comparison?

A I formed the opinion that a latent print which appears on the musilage surface, or the sticky side of a piece of scotch tape, which is in the area which I'm now indicating, and the ink impression appearing in the right index finger block of Government's Exhibit 39, were made by one and the same finger.

Q And where was that?

A It was found on the sticky side, the underside of the scotch tape, which is a part of, or on the orange piece of paper, which is Government's Exhibit 12.

Q Did you find any other fingerprints within the contents of Government's Exhibit 12, which is this envelope?

A Yes, sir, I did.

Q Would you indicate to the jury where you found it?

(The witness then indicated.)

Q Is that the one?

A Yes, sir.

There are others. This was one which was developed on the yellow piece of paper, and on the area which I am now indicating.

I formed the opinion that this latent print and the ink impression appearing in the right thumb finger block of Government's Exhibit 39, were made by one and the same finger.

I also developed another latent print on a portion of Government's Exhibit number 12, which is a negative. I form the opinion that the latent fingerprint which I developed on this negative, and the ink impression appearing in the left index finger block of Government's Exhibit number 39, were made by one and the same finger.

MR. DE PETRIS: Could I have this separately marked?

THE COURT: Yes.

MR. DE PETRIS: As Government's Exhibit 12-A?

THE COURT: Yes.

THE CLERK: Part of Government's 12, marked as Government's Exhibit 12-A.

****

Q You may continue.

A I also formed the opinion that a latent fingerprint which appears on a piece of orange paper, with a piece of yellow paper, and the negative attached, and the ink impression appearing in the right thumb finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Is that the extent of the fingerprints recovered from Government's Exhibit 12?

A Yes, sir, those I identified, yes, sir.

MR. DE PETRIS: Could I have these separately marked as Government's Exhibit 12-B, C and D?

THE COURT: All right.

THE CLERK: So marked.

BY MR. DE PETRIS:

Q Was that the extent of the fingerprints found within those two Exhibits, and that was contained in this box (Indicating).

A Yes, sir, it was.

Q Do you have some identifying numbers by which you can determine whether or not you examined this box (Indicating)?

A Yes, sir, I do.

Q This is Government's Exhibit 15.

Did you recover any identifiable latent fingerprints on anything contained within that box?

(The witness then stepped off the witness stand and approached the Exhibit.)

A Yes, sir, I did.

MR. DE PETRIS: Could I have this separately marked as Government's Exhibit 15-A?

THE CLERK: Part of Government's Exhibit 15, marked as 15-A.

BY MR. DE PETRIS:

Q I show you Government's Exhibit 15-A and ask if you recovered fingerprints from that Exhibit?

A Yes, sir, I did.

Q And would you explain what method you used to recover the fingerprints contained on Government's Exhibit 15-A, or a portion of Government's Exhibit 15-A?

A The answer was by the inhydrin which reacts with the amino acids or the proteins.

Q Did you make a comparison of the latent fingerprints which you found on a portion of Government's Exhibit 15-A with Government's Exhibit 39?

A Yes, sir, I did.

Q And would you relate to the jury your opinion with respect to that comparison?

A I formed the opinion on one of the sheets of yellow paper in the area which I am now indicating, I formed the opinion that the latent fingerprint which I developed, and the ink impression appearing in the left index finger box of Government's Exhibit number 39, were made by one and the same finger.

On another sheet of yellow paper, which is a portion of Government's Exhibit 15-A, in an area which I am now indicating, I formed the opinion that the latent fingerprint which was developed, and the ink impression appearing

in the right middle finger box of Government's Exhibit 39 were made by one and the same finger.

And on a blue piece of paper (indicating), which is a portion of Government's Exhibit number 15-A, and the latent fingerprint which was developed in the area which I an now indicating, I formed the opinion that this latent fingerprint, and the ink impression appearing in the left thumb finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Now, Mr. Ball, do you recall where those yellow pieces of paper, how they were contained within Government's Exhibit 15-A?

A Well, they were interspersed, but I don't know exactly where.

MR. FISCHETTI: Your Honor, I will object to that.

THE COURT: Overruled.

A I don't know exactly where they were in the stack, if they were on the top, the bottom, or in between the stack of currency.

Q Within this particular stack here (indicating)?

A Right, right.

Q From your notes, can you make a comparison as to whether or not you also examined this box (indicating)?

A I did examine that box.

THE COURT: The number is on this side.

THE WITNESS: There is another number on top.

(The witness then descended the witness stand and approached the Exhibit.)

THE WITNESS: Okay, thank you, sir.

(The witness then returned to the witness stand.)

A Yes, sir, I did.

Q Did you recover any identifiable latent fingerprints from an examination of the contents of this Exhibit, which is Government's Exhibit 16?

A Yes, sir, I did.

Q And are these the portions of Government's Exhibit 16 from which you recovered an identifiable latent fingerprint?

A Yes, sir, these are the items.

MR. DE PETRIS: Could I have these separately marked as Government's Exhibit 16-A?

THE COURT: Yes, they may be marked.

THE CLERK: A portion of Government's Exhibit 16 marked as Government's Exhibit 16-A.

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(continued on next page.)

Q Would you indicate to the jury where on those several items you found fingerprints which are identifiable?

A In the area of a portion of Government's Exhibit 16-A, which I am now indicating, a latent fingerprint appears.

Q Did you make a comparison of that with Government's Exhibit 39?

A Yes, sir, I did.

Q What is your opinion?

A I formed the opinion that the impression which appears in the area which I am now indicating, and the ink impression which appears in the right middle finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Now, Mr. Ball, when you first examined these items, they were not contained within this plastic; is that correct, sir?

A That is correct.

Q Did you place them in the plastic after you made the identifications?

A Yes, sir, I did.

Q Please continue.

A In the area where I am now indicating, I formed the opinion there were two latent fingerprints which appear, and I formed the opinion that one of these latent prints and

the ink impression which appears in the left ring finger block were made by one and the same finger, and that the other latent impression, which is in the area which I am now indicating, I formed the opinion that that latent print, and the ink impression in the left little finger block of Government's Exhibit 39, were made by the same finger.

On another sheet of paper which is a part of Government's Exhibit 16-A, in the area which I am now indicating, I form the opinion that this latent print and the ink impression appearing in the left ring finger block were made by one and the same finger, that is, in the finger block of Government's Exhibit number 39, that they were made by one and the same finger.

On another sheet of paper, which is a portion of Government's Exhibit number 16-A, I formed the opinion that the latent print which appears in the area which I am now indicating, and the ink impression appearing in the right thumb finger block of Government's Exhibit number 39, were made by one and the same finger.

On the four sheets of paper which are a portion of Government's Exhibit number 16-A, in the areas which I am now indicating (The witness then indicated four places), I formed the opinion that these four latent prints, and the ink impression appearing in the right thumb finger block of Govern-

ment's Exhibit number 39, were made by one and the same thumb print.

Q Mr. Ball, perhaps it would be easier if you step down here.

(The witness did as requested.)

THE WITNESS: Okay, sir.

May I, your Honor?

THE COURT: You may step down.

BY MR. DE PETRIS:

Q Have you had an opportunity to examine the contents of Government's Exhibit 17?

A Yes, sir, I have.

Q You may return to the witness stand.

(The witness did as suggested.)

MR. DE PETRIS: Could I have this separately marked?

THE CLERK: Portion of Government's Exhibit 17 marked as 17-A.

BY MR. DE PETRIS:

Q From Government's Exhibit 17, did you recover any identifiable latent fingerprints?

A Yes, sir, I did.

Q And did you make a comparison between those identifiable latent fingerprints and the inked fingerprints

contained on Government's Exhibit 39?

A Yes, sir, I did.

Q And what was your opinion, with rewpedc to your examination?

A I formed the opinion that the latent impressions which appear on six -- excuse me, -- counterfeit notes -- excuse me -- which are a portion of Government's number 17-A and in the area which I am now indicating (at this point the witness indicated six points on each of the counterfeit notes) -- and the ink impression appearing in the right thumb block of Government's Exhibit number 39, were made by one and the same thumb print, and also on a piece of yellow paper which is a portion of Government's Exhibit number 17-A, the latent print which was developed on this piece of paper in this area which I am now indicating, and the ink impression appearing in the right thumb finger block of Government's Exhibit number 39, were made by one and the same thumb print.

Q Mr. Ball, do you recall where these particular items were within this stack when you first examined them?

A No, sir, I don't.

Q But they were somewhere within this stack?

A Yes, sir.

Q I see.

Mr. Ball, could you step down again?

(The witness did as requested.)

Q I would ask you to examine the contents of Government's Exhibit number 18.

Did you recover any identifiable latent fingerprints within this Exhibit?

A Yes, sir.

MR. DE PETRIS: You may return to the witness stand.

(The witness did as suggested.)

MR. DE PETRIS: May I have these marked as a separate portion of Government's Exhibit 18?

THE COURT: Let them be marked.

THE CLERK: Part of Government's Exhibit 18 is marked Government's Exhibit 18-A.

BY MR. DE PETRIS:

Q I show you Government's Exhibit 18-A, and ask you if you made a comparison of the various portions of Exhibit 18-A with Government's Exhibit 39?

A Yes, sir, I did.

Q And what was the result of your comparison?

A I formed the opinion that the latent fingerprint which appears in the area which I am now indicating on the yellow sheet of paper, a portion of Government's Exhibit number 18-A, and the inked impression appearing in the right ring

finger block of Government's Exhibit number 39, were made by one and the same finger.

I also formed the opinion that a latent print which was developed on another sheet of paper, a portion of Government's Exhibit number 18-A, in the area which I am now indicating, and the inked impression appearing in the left middle finger block in Government's Exhibit number 39, were made by one and the same finger.

I also fromed the opinion that a latent print which appears or was developed in the area which I am now indicating, which is on another sheet of yellow paper, and which is a portion of Government's Exhibit number 18-A, and the inked impression appearing in the right middle finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Will you step down again, Mr. Ball, please?

(The witness did as requested.)

Q Did you have occasion to examine the contents of Government's Exhibit 45?

A May I just look at it?

(The witness then examined the Exhibit.)

A Yes, sir, I did.

Q And did you recover any identifiable latent fingerprints from an examination of the contents of Government's

Exhibit 45?

A Yes, sir, I did.

Q Do you recall how many you recovered?

A I could pick them out, sir.

Q Would you, please?

A They appear on the items which I am now handing to you.

MR. DE PETRIS: I see.

May I have these separately marked?

THE COURT: Yes, sir.

MR. DE PETRIS: 45-A, B and C.

THE CLERK: Three parts of Government's Exhibit 45, marked as Government's Exhibit 45-A, B and C.

BY MR. DE PETRIS:

Q I show you Government's Exhibit 45-A, and ask you if you recovered an identifiable latent fingerprint from that Exhibit?

A Yes, sir, I did.

Q And did you compare that identifiable latent fingerprint with the inked fingerprints contained in Government's Exhibit 39?

A Yes, sir, I did.

Q What was the results of your comparison?

A Two of the pieces of paper which are a portion

of Government's Exhibit 45-A, in the areas which I am now indicating on the two pieces of paper, well, I form the opinion that these latent prints, and the inked impression appearing in the right thumb block of Government's Exhibit number 39, were made by one and the same finger.

I also form the opinion that the latent print which was developed on another piece of paper in the area which I am now indicating, which is a portion of Government's Exhibit number 45-A, and the inked impression appearing in the right index finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Mr. Ball, do you recall how they were contained within Government's Exhibit 45-A, or 45, rather?

A No, sir, I don't, no.

Q I show you Government's Exhibit 45-B, and ask you if you recovered any identifiable latent fingerprints from that Exhibit?

A Yes, sir, I did.

Q And did you make a comparison with Government's Exhibit 39?

A Yes, sir, I did.

Q And what was the result of that comparison?

A I form the opinion that a latent print which appears on the mucilage side, of the underside of the piece of

the piece of scotch tape, which is a portion of Government's Exhibit number 45-B, in the area which I am now indicating, I form the opinion that that latent print and the inked impression appearing in the right index finger block of Government's Exhibit number 39, were made by one and the same finger.

Q Mr. Ball, is it your testimony that the identifiable fingerprint was found on the sticky side of the scotch tape?

A Yes, sir, it was.

(continued on next page.)

Q I show you Government's Exhibit 45-C and ask you if you found an identifiable latent fingerprint in that.

A Yes, I did.

Q And did you make a comparison with Government's Exhibit 39?

A Yes, sir, I did.

Q And what were the results of that comparison?

A I formed the opinion that the latent print which was developed in the area which I am now indicating on Government's Exhibit 45-C and the inked impression appearing in the left index finger block of Government's Exhibit 39 were made by one and the same fingerprint.

Q Mr. Ball, were there any other identifiable latent fingerprints which you recovered?

A Yes, sir, there were.

Q And would you -- could you come down and show and indicate where they were found?

A Yes, sir, I can. These are unidentified latent prints.

I'm sorry, did I misunderstand you?

Q Yes.

A Did you want -- These are latent prints which were developed but for which no identifications were made.

Q I see.

A In the area which I am now indicating.

Q Were there any other fingerprints recovered which you were able to identify?

A No, sir, there were not.

Q Did you make a blow-up of an inked and latent fingerprint concerning one of these exhibits which you testified about?

A Yes, sir, I have.

Q Do you have it with you?

A Yes, sir, I do.

Q Could I have it, please?

MR. DE PETRIS: Could I have this marked for identification?

THE COURT: Yes.

THE CLERK: Blow-up marked Government's Exhibit 56 for identification.

(So marked.)

Q I show you Government's Exhibit 56 for identification. Is this the blow-up that you had prepared concerning one of these fingerprints which you testified about?

A Yes, sir, it is.

Q Do you recall which one it is?

A Yes, sir, I do. It's in the -- it's in the

first box, in that -- yes, sir.

Q Government's Exhibit 16-A?

A Yes, sir, it appears on one of the items in Government's -- Government's Exhibit 16-A.

Q Would you indicate to the jury where --

A It's at the area which I am now indicating to the jury.

Q I see. Would you explain to the Court and jury the various indications on that blow-up of how you make your fingerprint identification?

A Yes, sir, I will.

THE COURT: Can you set this up some place where everybody could look at it?

THE WITNESS: Your Honor, if I may step back in front of the jury a little bit, would that be sufficient?

THE COURT: Yes, you may do that. The defendants have to see it, too. Maybe move it way back towards the spectators.

THE WITNESS: Ladies and gentlemen, this is the chart that I prepared for you so that I may illustrate how a fingerprint identification is effected.

These are two enlarged photographs, an

approximate eighteen times enlargement of the original. The photograph is labeled "latent print" and gives an enlargement of the impression which appears in the area which I am now indicating.

I am going to get the Government's Exhibit number, if I may.

MR. LA ROSSA: 16-A.

Q I believe it's 16-A.

A This is 16-A. This is a portion of Government's Exhibit 16-A.

And the photograph labeled "inked impression" is an approximately eighteen times enlargement of the inked impression, one of the inked impressions which appears in the block marked "left four fingers taken simultaneously."

This is an impression of the inked impression which also appears in the left ring finger of Government's Exhibit 39, which is a fingerprint card bearing the name of Edward Bogin.

The black lines in the two photographs represent the raised portion of the skin of the fingers, and the red lines and the numerals were put on by me so that I may illustrate to you different characteristic points which I found in the two prints which I compared.

In the photograph of the latent print near

the center of the photograph there is a dividing ridge. The point of the division I have marked as characteristic point No. 1.

Below characteristic point No. 1, with one ridge intervening, there is an ending ridge which I have marked as characteristic point No. 2.

Below characteristic point No. 2, with one, two, three ridges intervening, there is another ending ridge, which I have marked as characteristic point No. 3.

Keeping these three points in mind, and their relationship to each other, I will now go to the photograph of the inked impression.

Near the center of the photograph there is a dividing ridge. And the point of division I have marked as point No. 1.

Below characteristic point No. 1, with one ridge intervening, there is an ending ridge which I have marked as characteristic point No. 2.

Below characteristic point No. 2, with one, two, three ridges intervening, there is an ending ridge which I have marked as characteristic point No. 3.

Now to go back to the photograph of the latent print. Below characteristic point No. 3, with one, two, three, four, five ridges intervening, there is a dividing ridge, which I

have marked as characteristic point No. 4.

Below characteristic point No. 4, with no ridges intervening, there is an ending ridge which I have marked as characteristic point No. 5.

And above characteristic point No. 5, following that ridge down, there comes a point where that ridge ends. I have marked this end ridge as characteristic No. 6.

Keeping these three points in mind, and their relationship to each other, I will now go back to the photograph of the inked impression.

Below characteristic point No. 3, with one, two, three, four, five ridges intervening, there is a dividing ridge. The point of the division I have marked as characteristic point No. 4.

Below characteristic point No. 4, with no ridges intervening, there is an ending ridge which I have marked as characteristic point No. 5.

And above characteristic point No. 5, following the ridge now, we come to a point where this ridge ends, and I have marked this as characteristic point No. 6.

Ladies and gentlemen, based upon the number of points which I charted, some which I pointed out individually, some which I did not, and still others which I did not chart, I formed the opinion that the -- the latent print which

appears on the portion of Government's Exhibit 16-A in the area which I am now indicating and the inked impression which appears in the left forefingers taken simultaneously blocked portion of Government's Exhibit No. 39-A, which is the fingerprint card bearing the name of Edward Bogin, were made by one and the same fingerprint.

Q Mr. Ball, you testified that in addition to the ten points which you have indicated you did chart, you did discover other identifiable points?

A Yes, sir, I did.

MR. DE PETRIS: I have no further questions, your Honor.

THE COURT: Well, it's 4:30. I guess --

MR. FISCHETTI: Your Honor, I understand Mr. Ball has to get back to Washington. I'd be very, very brief.

THE COURT: All right, you may proceed.

MR. SPARROW: May we ask before questioning by Mr. Fischetti that there be a limiting instruction to the jury concerning this testimony insofar as it pertains to any of the other three defendants, since the only one named is Mr. Bogin.

THE COURT: Well, this testimony, ladies and gentlemen, obviously relates to the identification of

Mr. Bogin with some of the currency. It does not identify any other witness, any other defendant, and its relation to the other defendants will depend on what you find with respect to the conspiracy to possess or distribute this currency.

Go ahead, Mr. Fischetti.

CROSS-EXAMINATION

BY MR. FISCHETTI:

Q Just a few questions, Mr. Ball.

A Yes, sir.

Q I believe you testified that a print is made from perspiration or some type of body oil on a finger is placed on an object; is that a fair analysis?

A That -- that would be one of the ways that a latent print is developed, yes, sir.

Q In other words, if a man were wearing a rubber glove, a surgical glove, and he touched the item it would leave no prints; is that correct?

A No, sir, not on the object which the glove touched. No, sir, it would not.

Q The inside of the glove would be on the object.

A There may be some on the inside of the glove, yes, sir.

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Q But not on the object?

A No, sir, not on the object.

Q Now, you ran different type of tests on these bills and everything else that Mr. DePetris showed you, did you not?

A Yes, sir, I did.

Q Neohydrin tests (sic)?

A The paper items, the porous items were tested with ninhydrin, and the non-porous objects such as the metal plates, fingerprint powder was used on those.

Q From the tests that you ran on the objects will you tell me when the prints were made?

A No, sir, I cannot tell you when they were made.

Q Could you tell me if the prints on all these objects could have been made on the evening of February 15th? Would that be possible?

A No, sir, I could not.

Q Would it be posible that they were made during that time, February 15th late in the evening, 1973?

A Well, it's possible, I suppose.

Q Now, maybe we can do this the way Mr. DePetris did it. May I ask you to step down?

A Yes. Yes, sir.

Q Let's take a box. Can I ask you to do it this

way. I am not as strong as Mr. DePetris.

Now, in this box is contained numerous bills of counterfeit money -- right?

A Yes, sir.

Q And I notice that they are all colored a different color, blue; am I correct?

A Yes, sir.

Q And I assume that that color is on the bill because you tested it, all these bills, for fingerprints?

A Yes, sir, the ninhydrin process to determine if they were counterfeit.

Q Each and every bill contained in this box was tested; is that correct?

A Yes, sir, that should be, each and every bill.

Q And each and every bill in this box was tested for latent prints to be compared with that card with Edward Bogin's name on it; is that right?

A Yes, sir.

Q And out of this entire box you found prints on these three items; is that correct?

A I'll have to check my notes.

Q Check your notes.

A Yes, sir, that's correct. These -- these three pieces of paper.

Q Now, can you tell me whether or not each of these pieces of paper were on top of a packet of bills such as this when you first saw them?

A Which?

Q These three pieces of paper with the prints of Mr. Bogin, can you tell me whether or not when you first saw them to examine them they were on the top or bottom of these piles of bills?

A No, sir, I cannot.

(continued next page)

Q All the bills in this box are also similarly colored blue?

A Yes.

Q And they were all checked?

A Yes.

Q For the prints of Mr. Bogin?

A Yes.

Q This entire box, how many prints did you find?

A I did not check this box. Government's Exhibit 45-C, I believe, contained in this box --

Q These items loose were in this box?

A They were in this box.

Q Tell me, how many prints are in the box?

A There are no prints in this box.

Q None, whatsoever?

A No.

Q How many bills are in that box?

A Thousands. I don't know how many.

Q How many bills did you examine altogether?

A Approximately 50,000.

MR. LA ROSSA: How many?

MR. FISCHETTI: 50,000.

MR. LA ROSSA: Thank you.

Q Would you have a seat, please.

I assume, without keeping you here much longer, if I ask you similar questions with reference to the rest of the boxes, your answer would be the same? In other words, only the items that you testified to were prints of Mr. Bogin in these boxes?

A Yes.

Q And all the other boxes were examined for Mr. Bogin's prints?

A Yes.

Q No prints were found?

A Not of Mr. Bogin.

Q This is a sample package of bills that came from the Exhibit, those are bills you examined?

A Yes.

Q Those are bills you examined for Mr. Bogin's prints, is that right?

A Yes.

Q What we just did here now, my fingerprints are on these bills?

A Not necessarily.

Q They might not be?

A Might not be.

Q Your fingerprints might be on the bills?

A Might be.

Q Did you run any tests on these bills of any Secret Service Agents?

A No, sir.

Q Did you run a test on Agent Kramer's prints?

A No.

MR. LA ROSSA: Who?

MR. FISCHETTI: Kramer.

Q Government's Exhibit 11 are plates, correct?

A Yes.

Q How many plates are there?

A Eighteen.

Q Including 11-A?

A Yes.

Q Did you run tests on all eighteen?

A Yes.

Q Did you find any prints of Mr. Bogin?

A Yes, I did.

Q On all eighteen?

A On one plate.

Q 11-A?

A Yes.

Q You can't tell me when that plate was made?

A No, sir.

MR. FISCHETTI: I have no further questions.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Did you put the fingerprints of one Anthony LaVecchia into this examination as well?

A No, sir, I did not.

Q I mean, did you or one of the other Agents?

A I was requested to compare the prints of Anthony LaVecchia.

Q I assume all 50,000 bills and all the various pieces of Exhibits, everything we looked at for the last hour and a half, or two hours, tell the jury how many times Anthony LaVecchia's fingerprints came up?

A None.

Q I'm sorry?

A None.

Q Let me ask you one other thing, may one determine a fingerprint on a piece of metal?

A You mean, can a fingerprint be developed?

Q Yes.

A Yes.

Q As a matter of fact, a piece of metal is a good product?

A It depends on the type of metal, who touched it, and how they touched it.

Q Were you given any pieces of metal to determine whether or not Mr. LaVecchia's fingerprints were on it?

A The plates, if you consider that metal, were submitted to our laboratory.

Q How about a key? Did anybody give you a key?

A No, I don't recall any key.

Q Did anybody give you any real American currency to check?

A No, sir, not in this case.

Q In this case?

A No.

Q Nobody bothered to do that?

A No, sir. I did not receive any in the laboratory.

MR. LA ROSSA: Thank you very much.

THE COURT: Anything more?

MR. SPARROW: No questions.

MR, KRINSKY: No questions.

THE COURT: Mr. De Petris?

MR. DE PETRIS: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q Mr. Ball, were examinations done with respect to the currency as to Thomas Smith?

A Yes, sir. There was a Thomas Smith's prints submitted.

Q Were there any prints recovered on any of the plates from Thomas Smith?

MR. FISCHETTI: I object.

THE COURT: Overruled.

A No, sir, there were not.

Q Angel Martinez?

A I compared them, there were none identified.

MR. LA ROSSA: There is no identification of Thomas Smith's prints and Angel Martinez within the record.

THE COURT: Objection overruled.

MR. LA ROSSA: Note our objection.

THE COURT: Continue.

Q The only prints which you were able to identify from examining these Exhibits on the floor, and what was contained within these Exhibits, were that of Edward Bogin, that were identifiable?

A Yes.

Q As to Government's Exhibit 15-A, do you recall where these three pieces of -- where you found fingerprints contained within the stack?

A No, sir, I do not.

Q Could have been on top or the bottom?

A Could have been anywhere in the stack.

Q There were three, is that correct?

A Yes.

Q And these were within this particular stack somewhere (indicating)?

A Yes, sir.

MR. DE PETRIS: I have nothing further.

THE COURT: Anything more?

RECROSS EXAMINATION

BY MR. FISCHETTI:

Q You found other prints, didn't you, Mr. Ball?

A Other latent prints.

Q Whose were they?

A I did not identify anyone else.

Q Who is Thomas Smith?

A I don't know, sir.

Q Who is Angel Martinez?

A I don't know the individual.

Q How many other prints did you find you couldn't identify?

A Several latent prints. I could not identify one palm print developed on the items submitted.

Q There were prints on these bills not Mr. Bogin's

that you know of?

A Yes.

Q Not Mr. LaVecchia's?

A Yes, sir.

Q But you don't know whose they are?

A No.

THE COURT: We will take a recess. I have a short hearing tomorrow morning, and we will start at 10:30 tomorrow morning.

Meanwhile, don't talk about the case amongst yourselves, or with anyone else. I don't know what we will do about the heat tomorrow, but I hope it will be comfortable.

(A recess was taken at this time until June 26, 1974, at 10:30 A.M.)

* * *

MR. FISCHETTI: Judge Judd;

Mr. DePetris;

My colleagues at the defense table;

Madame Foreman, ladies and gentlemen of the jury:

This is the last time that I can speak to you and it is the only time that I can present to you what I consider to be a reasonable approach to the arguments that I can advance on behalf ofMr. Bogin and to comment on the evidence, or rather, I should say, at this time, the lack of evidence, that has been produced in this courtroom.

Now we have come to the end of the case, and after hearing my argument and the arguments of my colleagues, Mr. DePetris and then the Charge of the Law by Judge Judd, you will go into that jury room and determine whether there is a reasonable doubt as to the guilt of Mr. Bogin or whether there is no reasonable doubt.

Now remember in my opeining, I asked you for several things:

I asked you for your patience, I thank you for it;

I asked you to listen intently, and I believe

that you have; and I told you certain things that existed in every criminal case. I told you that in every criminal trial, each defendant, Mr. Bogin and the others, are surrounded by a presumption of innocence, and that that is a shield that protects them under our system of laws, and remains with them throughout this entire trial, and is with them right through, and will continue to be with them while you deliberate in that jury room, unless and until you are convinced of the guilt of my client beyond a reasonable doubt.

I also told you about the burden of proof:

I said that it rests solely at this table (indicating government's table) and that Mr. DePetris bears with the government the burden of proving Mr. Bogin's guilt beyond a reasonable doubt.

Now Mr. DePetris told you in his opening that he would prove to you that Mr. Bogin was guilty beyond a reasonable doubt.

Now when he said that, that wasn't a gratuitous statement, it wasn't something that he said because he is a nice man -- and he is -- it is something that he must prove to you, because, if he doesn't, it is your sworn duty to come back into this jury box and

say, "Not guilty."

Now you have heard of the term, "reasonable doubt," you have heard it from my colleagues in the openings, and you heard it again now, and those are very, very important words, and I told you in my opening, and I tell you again now, that I have no right to define those words to you, Judge Judd will in his charge, but for the sake of my argument, let me merely say this:

A reasonable doubt is a doubt based on reason, not based on sympathy,not based on bias: you can't convict my client, Mr. Bogin, based on that.

But by the same token, you can't convict him based upon suspicion, surmise or conjecture. They are not substitutes for proof, for evidence and for facts.

I say to you right now that unless you use suspicion, surmise and conjecture, you cannot convict Edward Bogin.

Let us take a look at the evidence against him. Look at the hard evidence that was produced in this courtroom:

First of all, you heard fingerprint testimony and you have seen, during the course of this trial,

from where youwere sitting, at this table boxes and boxes of counterfeit money, and we at the defense table have seen you looking at the money a few feet away.

(At this point, Mr. Fischetti indicated an exhibit and removed certain packets of counterfeit money therefrom.)

MR. FISCHETTI: Let me show you what it is.

(At this point, some packets were handed to members of the jury.)

MR. FISCHETTI: May I hand it to the jury?

Just take a look at this and pass it down, and I will put a couple of packets on this end.

This is the counterfeit money that is in evidence; this is the counterfeit money thatyou have heard about; this is the counterfeit money that all the testimony has been about, what you are looking at now.

Now during the course of this trial, Mr. DePetris presented a witness by the name of Mr. Ball, I think you will remember, he was the fingerprint expert, and he took that witness stan d and he testified about fingerprints.

Now he showed you these charts (indicating)

and he showed you all of these points (indicating on chart,) six, seven, eight, nine and 10, one, two, three, four, five, and he then took -- talke d about bridges, he talked about impresses, he talked about perspiration and he talked about fingerprints in general.

He also talked about tests, he told you about the inhydrin test, I believe it was.

Thank you.

(At this point, Mr. Fischetti recovered the packets of counterfeit money)

MR. FISCHETTI: He told you about black powder tests --

Make sure I get them all back.

Everyone had a chance to look at them?

A MEMBER OF THE JURY: That is all right.

MR. FISCHETTI: I will put them over here.

He then testified about prints of Mr. Bogin that were taken at the Secret Service, and compared those prints to the items that are here in evidence.

Now, in his opinion, they were Mr. Bogin's prints. Let us start with that.

But when were the prints made?

That he can't tell us, whether they were made on the evening of February 15th, or whether they were made when the money was printed.

He doesn't know and we don't know.

Now, I ask you, isn't it reasonable to believe that on the night of February 15th, when we know through the government's witnesses that this money was at the Secret Service and we know through the government's witnesses that Mr. Bogin was at Secret Service; isn't it reasonable to believe that at that time he touched thismoney?

Or is it more reasonable to believe that his fingerprints contained on these items occurred when the money was printed?

He introduced evidence about plats. I'm not going to pass these around, because they are dirty.

These are the plates, I think there are about 18 of them, all inked plates, with a picture of counterfeit money on the front.

Now if you remember the testimony, Mr. Bogin's prints appear on one plate, not on two, not on four, not on all 18, but on one plate.

Now the cutting supposedly from the counterfeit money that was introduced, you look at them,

thousands of them. (Indicating).

No prints on the cuttings.

Now, wouldn't it be easy for the government to prove that it didn't happen that way on February 15th, wouldn't it have been easy for the agent to testify that during the course of the evening on February 15th someone always had Mr.Bogin in custody, and he was in custody at that time, he was under arrest, and at no time when he was there on February 15th, no agent ever showed him this money, or the plates or the negatives or the powder?

Why didn't they take the prints of the agents who were there?

Wouldn't it be easy for Mr. Ball to testify that he had prints of all the agents, and that their prints aren't on the money?

You know, all of us were chosen here inthis courtroom, that is the judicial system, and it is done by defense counsel, Mr. DePetris, Judge Judd, and the very able law clerks, and everybody have been swept into this system for this particular trial, and at the beginning of the trial, you may remember that all defense counsel huddled in that corner (indicating) while you were being selected.

That wasn't a mystery; you weren't singled, we were trying to get what we considered to be the best jury we could in this district to use their common sense, and we don't want you to leave your common sense out in the hall, that is a part of you which makes this system work.

So let us for the moment try and reason together:

First, do you think that Mr. Bogin would use these plates from these negatives to print this money (indicating) and keep it in an office that he leases?

And if he did, wouldn't be, wouldn't it be a very simple precaution that while he was using the plates and the negatives to print the money, he would wear rubber gloves?

Do you remember Mr. Ball testified thatif you wore rubber gloves, there would be no prints on anything, the prints would be inside the gloves, but there wouldn't be any prints on any of the items.

Let me show you one of the pictures that has been introduced into evidence.

I hope you can all see it.

By the way, anything that is here, anything that has been introduced into evidence, you have the right to ask for while you deliberate, and it will be sent into you.

These are prints at the seizure, photos at the seizure, that night at Beacon Printing.

Do you see the agents wearing rubber gloves?

Now, why are they wearing rubber gloves?

So their prints don't get on the money.

Don't then you think Mr. Bogin would have taken that reasonable precaution?

But let us say for a moment that he is completely stupid, okay, and he doesn't take any precautions, that he prints the money in a place where he leases, that he keeps it in his office: let us say he does all that; okay?

Why aren't there prints on all the plates; why just one out of 18?

Why aren't these prints on all the negatives?

Why aren't his prints on the cuttings?

And what about the money, what about the money that he printed,why aren't there prints on the money?

What about the package in the locker (indicating)?

This is supposedly what was seized from the locker at Penn Station.

I am sure Mr. DePetris will argue to you that Mr. Bogin's prints appear on the New York Times which wrapped the money, and on some tape thatsealed the package.

But here is $20,000 that was contained in the package, and why aren't his prints on the money?

Isn't it reasonable to believe that the Secret Service on the night of February 15th, that he was shown the package and looked at the package and touched the paper and touched the tape,and if he did all of that, yet if he printed all of this, why aren't his prints on the money?

(continued on following page)

MR. FISCHETTI (continued): Now, look, Mr. Ball testified that contained in these boxes are 50,000 bills, not $50,000, but 50,000 independent bills (indicating).

Why isn't his prints on the money, if he printed it?

Now, who printed themoney?I don't know, I am not Perry Mason; this isn't a TV show where someone late in the trial says, "I did it." This is real life.

I can't prove to you who did it, but I can show you some things:

Do you remember Mr. DePetris introduced this into evidence (indicating chart). This is a layout of Beacon printing.

If you remember,I stipulated in open court that Mr. Beacon has a lease for this whole area, and has from 1968 to now.

No issue, he leased it.

But also, Broadwin Printing, Morey Printing and Ami Printing were within the same suite.

Who are they?I don't know.

I know one thing: that from any one of these three offices, there is access to these presses.

We asked the agent, I believe I did, we asked

who owned Ami Printing, who worked for Morey Printing, who was connected with Broadwin Printing.

Don't you think a simple investigation would have disclosed who it was?

Don't you think they had a duty to go to those people who are contained in the same suite and determine what their relationship was?

Did you hear anything about that during the government's case?

And while we are talking about,about that, what about Angel Martinez and Thomas Smith? That you did hear some testimony about. Angel Martinez and Thomas Smith worked for Beacon Printers, and they were printers. That was told you throughout this entire trial, during the presentation of Mr. DePetris' case, but you never heard one single, solitary word that Mr. Bogin is even a printer.

But we know that Angel Martinez is, and we know that Thomas Smith is.

How do we know? We know because Agent Kramer, who is sitting at this table, swore to an affidavit, this paragraph being in evidence, and said that Angel Martinez and Thomas Smith, defendants, were employed as printers at the Beacon Company,

270 Lafayette [redacted], and were present at said company on February 15, working at said printing company.

We know they were arrested.

We don't know where they are now.

Where is the camera?

Did you hear one of the agents testify that you use the plates to make the money, and you use the negatives to make the plates, and any imperfections in the negative is contained on the plate, and then transferred to the money.

So the negative becomes crucially important, and in order to make that negative, you need a camera.

Do you remember the testimony about the camera on skids that you need to make the negatives?

They searched this entire area; where is the camera?

And talking about prints, whose are the seven unidentified fingerprints on this money that Mr. Ball testified to?

Who are they? Someone who worked for any of these other printing companies, someone we never heard about, that counterfeiter? We will never know.

Let us look at the indictment just for one minute, because that is what Mr. Bogin is actually charged with:

He is charged in the conspiracy count, that is count 12, he is charged in the conspiracy count with conspiring with individuals, he is charged with conspiring with Mr. Kurshenoff and Mr. Andriotis.

Did you hear during these two weeks one word, one sentence from any government witness, saying that Mr. Bogin even knows Mr. Kurshenoff or Mr. Andriotis?

What about Philip Martino; who is he?

He sold money to a government agent, where is he?

Where is Albert Evangelista?

Why didn't they produce him?

Dominic Russo, him, they produced,he took the stand and as to the evidence, I'm not going into that at any length, he will be, I believe, covered by my colleagues.

But the evidence is that he doesn't even know Mr.Bogin.

So who are we left with?

John McMillan, the government's star witness, the man who is going to put all the pieces together in

this case.

Let me get rid of this money for a minute.

By the way, all of this money that you looked at, when you handed it back to me, your prints were on it, my prints are on it.

MR. DePETRIS: Objection.

THE COURT: Overruled.

MR. FISCHETTI: Mr. DePetris made the point, and let me state it, I'm sure he will do it again, that there are three pieces of paper on this wrapping here (indicating), and I'm sure he will try to argue to you that if one piece of paper was on the top and one piece of paper was on the bottom, then how did he attach the little pieces of paper?

Well, I ask you to recollect, when you were looking at the bills, did you hold it just like this (indicating) or did you go like that (indicating?)

Now, John McMillan, John McMillan, what do we know about John?

Well, we know he is a thief, we know he is an armed robber, we know he is a counterfeiter.

We know he sells drugs, heroin, cocaine; we know he takes drugs, heroin, cocaine. We know he was arrested for it.

A drug dealer.

We know he testified against others, we know what -- that he bought his freedom in Queens by giving up a name. He had been charged with a felony, the maximum penalty, life imprisonment, a conditional discharge, a warning on you, John, don't do it again.

Well, 90 days later, he is dealing in drugs. They even got him a lawyer so he could make his deals.

He testified against his -- members of his family, his nephew, and while he is testifying, while he is brought into this courtroom testifying at this trial, he is being paid by the United States Government, being paid with your taxes, and my taxes, and the money that he receives, he doesnt' even pay taxes on.

Now, we know he pled guilty to two charges, narcotics and counterfeiting, and to the pending charges he pleaded guilty but he hasn't been sentenced yet, and he hasn't been sentenced for 15 months, but he will be sentence,d he has to be sentenced, and he will be sentenced when you go and this case is over.

And whatdo you think he will get?

I believe I will leave that to you, to determine.

I submit to you most respectfully that John McMillan would go anywhere, do anything, testify against anyone for his freedom. He did it in the past and I think he will do it again.

But what does he say about Edward Bogin?

Let me see if I can refresh your recollection.

On February 15th, he says he was wearing a Kel device, as it is called; it is a mini-phone of some kind, and everything you say is recorded on it, and he was wearing it on February 15th and he meets Edward Bogin.

He would have you believe that he talked to Edward Bogin; he would have you believe that Edward Bogin talked to him, and that while this conversation is going on, Agent Kr[illegible] is sitting somewhere with a machine in his car, a radio with a mike or a receiver in his ear, listening to the conversation from the radio and recording the conversation on the tape.

Now I ask you, did you hear any conversations between John McMillan and Edward Bogin?

If there was such a conversation, don't you think you would have heard it?

He says, "Well, maybe the agent shut off the tape."

Did you hear Agent Kramer say anything about shutting off a tape, and if the tape were shut off, don't you think he would have told you,a nd if h e told you it was shut off,don't you think he would have heard the conversation on the radio, if it happened, if he was there, if he spoke to him?

(continued on following page)

But better than that, forget about the conversation that he overheard. We've got better proof than that from the Government. We've got a picture. We've got a picture of Edward Bogin and John McMillan.

Now, this is a picture of Edward Bogin. Does it mean anything? It's a picture of Edward Bogin. That's Edward Bogin, here's the picture.

Now, during this time John McMillan testified that he was talking to Edward Bogin -- right? And while he was talking to Edward Bogin they took a picture. Somebody else in the picture too: Mr. LaVecchia's brother.

Here is that picture. Where is John McMillan? Don't be fooled by Mr. DePetris saying to you that he walked away and spoke to him through a Kel device and told Agent Kramer that he just saw the man whose voice he thinks he recognized. Because that happened after the meeting.

I asked him if this was the picture, I asked him if he was there, he said he was. Where is he in the picture?

But he told Agent Kramer that he had heard a voice that he thought sounded similar. We'll get to

the voice in a minute.

Remember this: Agent Kramer then testified that he radioed the surveilling agents that there was another suspect in the case, a man whose voice Mr. McMillan may have identified, and he told his agents to keep him under surveillance from that moment on. Right?

Now, if they kept him under surveillance, if they kept Edward Bogin under surveillance, don't you think there would have been an agent who testified on this stand that he saw Edward Bogin take this package and bring it to Penn Central (sic). Wouldn't you want to know that if it happened, if he did it, if he printed it? You didn't hear anything like that.

What about the voice? This is incredible, he hears a voice in July, in an apartment; does he know what they're saying?

Let me tell you exactly what he says. Please excuse my back. He testifies that he is in Mr. LaVecchia's apartment in June or July, he hears someone come in and talk to Mr. LaVecchia.

"Question: When was this?

"Answer: Sometime in July.

"Question: Could you hear any of the

conversation that took place?

"Answer: Yes, they were talking about something else. I wasn't really listening to what they were saying."

What were they talking about? Who was it? He heard a voice. Now eight months later, he says that he hears Mr. Bogin's voice. He talks to Mr. Bogin on a tape that you didn't hear over a microphone that Agent Kramer didn't testify to, with a picture that he is not in, but he recognizes the voice. How does he recognize the voice? It was a foreign accent. Remember that?

"Answer: It had a foreign accent, it seemed like.

"Question: A foreign accent?

"Answer: To me, it had."

Skipping down:

"Question: But an accent?

"Answer: Yes."

Now, I asked Agent Kramer, I asked Agent Kramer whether or not Mr. Bogin has a foreign accent. Mr. Kramer said no.

Mr. McMillan will be covered again by my colleagues, but I ask you to consider one thing for the moment, and I ask you to consider it seriously:

assume just for one moment that the fate of Mr. Bogin or of any of these gentlemen depended upon Mr. McMillan, and we had called him as our witness, and after testifying for me Mr. DePetris brought out on cross-examination all the things you now know about him, theif, counterfeiter, drug dealer, and you knew all that, and he was my witness, not the Government's witness, and my case depended upon his credibility, his believability; how much time would you spend, how much time would you spend if I called him, not the Government, with all the majesty and importance that you may believe it imposes, but I called him as an ordinary witness? Would you spend five minutes on his credibility?

Mr. Bogin deserves no less.

I forgot one thing on the list, allow me to go back. This medical report is in evidence. You can ask for this in the Jury Room and it will be sent to you. It's the medical report of John McMillan at Mattawan Hospital for the Criminally Insane, where he spent some seventeen months. Now, that's before this trial, before anything happened here.

What do the doctors say about him? I quote:

"When questioned about his previous arrest, he

merely stated, 'I am a bad boy.' Patient was interviewed three weeks later. He appeared to be bewildered. Suddenly he started to cry. He said spontaneously, 'I don't know why everybody is against me.' He related to auditory hallucinations, stated that he hears voices."

And was certified insane.

Well, I'm going to finish up now because I know you all want to go to lunch, but I just want to say a couple of things and then I'll close: Mr. Bogin is here and he is charged with a serious crime, and you are going to decide his fate by tomorrow. Now, in my opening I asked you to abide by your oath as jurors. I say to you most respectfully I'm not begging you for that, I'm demanding it. That's your sworn duty. I can't make you do that -- none of us can.

I don't know what you're going to do when you go into that Jury Room, no one will ever know, and that's the best way, but if you decide, ladies and gentlemen, that Mr. Bogin or any gentleman seated at this counsel table is guilty merely because he is here, merely because the Government chose to charge him, if you believe that the indictment is anything more than

a piece of paper, if you draw any unfavorable inference from the fact that I decided as a lawyer not to place him on the stand, then I say to you, respectfully but candidly, you violate your oath.

You've heard the evidence, you know Mr. Bogin has never been arrested before. I ask you to consider it and return with the only verdict that I believe you can, and send him home to his family.

Thank you.

THE COURT: All right, we'll adjourn until ten minutes after two. In the meantime, you've heard part of the case, we are at a crucial point, but there is still some to be heard, so don't talk about the case among yourselves or with anyone else, and don't talk to people in the Courtroom at all. Thank you.

(Jury out.)

MR. LA ROSSA: Judge, may I see you for a moment, please?

THE COURT: Yes.

MR. LA ROSSA: I apologize for what I'm about to do: I have not got a written request for you as far as the Kotteakos charge is concerned.

THE COURT: Well, I'll give a single conspiracy.

MR. LA ROSSA: I'm going to request that your

Honor charge the Jury that if they find more than one conspiracy, they must acquit.

THE COURT: Well, they don't have to acquit LaVecchia and Bogin, they have to acquit the others.

MR. LA ROSSA: No sir, my request to you is that they must acquit each and every defendant within the conspiracy count, which I believe is the law under Kotteakos.

THE COURT: Well, Kotteakos was a very special case.

MR. LA ROSSA: There are decisions subsequent to that. What I'm asking you for is the typical Kotteakos charge that I think is given by almost every Judge.

THE COURT: Yes. Well, that's what I give.

MR. LA ROSSA: If you find more than one conspiracy within the conspiracy count, then you have a duty to acquit the defendants on the count of conspiracy. That's what the multiple conspiracy theme is.

Your Honor chose to allow each of the conspiratorial acts to go to the Jury, so now they must make the determination as a matter of fact that there is one conspiracy. If they, in their judgment, believe that there is more than one conspiracy within

the testimony, they must acquit as a matter of law.

If your Honor would like something in writing on it, I'll be glad to have it for you by tomorrow morning. The request that I'm asking you to give has been given historically in almost every conspiracy case that I know. Recently, within the last two weeks -- last two weeks, in the last two months -- Judge Lasker gave it in a case that Mr. Sparrow and I were in together in the Southern District, because we argued the Kotteakos point throughout the case.

Your Honor will recall that I raised the Kotteakos issue when the very first testimony came in.

THE COURT: Well, it may be just a question of facts, because the case with respect to Mr. Bogin and Mr. LaVecchia is one printing of half a million dollars worth of counterfeit, so it's all one conspiracy --

MR. LA ROSSA: But your Honor --

THE COURT: -- (continuing) -- as far as they are concerned.

MR. LA ROSSA: But your Honor, they must make the determination, not you. That's all I'm saying. I'm saying they must make the determination as to each of the defendants that there is one conspiracy. If they find that there is more than one conspiracy here, they must acquit. That's what the multiple conspiracy

theme is about.

This is what the Circuit Court has told us to raise, and if we don't raise, don't come up here and talk Kotteakos. Ask for a Kotteakos charge, they say.

Judge Kaufman has said it three or four times from the bench in my presence.

THE COURT: Well, I'll read Kotteakos.

MR. SPARROW: May I say, apropos of that, your Honor, that it is my intention in summation to argue to this Jury that if they have a reasonable doubt as to whether or not Dick Andriotis participated in a continuing single conspiracy, as distinguished from more than one, predicated on the 1971 activity as against the later 1972 activity, that your Honor will charge them that the law on that is they will have to acquit him. I intent to urge that, and that's why to a limited extent --

THE COURT: No, you shouldn't argue law to the Jury.

MR. SPARROW: I don't propose to argue law.

MR. DE PETRIS: Your Honor, I might also add it doesn't appear to me to be the law that Mr. Andriotis had to be a member of the conspiracy in 1971.

MR. LA ROSSA: Well, whatever --

MR. SPARROW: No, but if they find two conspiracies --

MR. LA ROSSA: Judge, that's why we are asking you for a pre-ruling, as the rules entitle us to. Once your Honor gives us a ruling on a request to charge, then in that event you are allowing us to argue to the Jury those particular facts, so the reason I'm asking you now is so before I give my summation your Honor will give me a decision on the Kotteakos doctrine.

MR. SPARROW: I think your Honor has indicated that while you may have some reservations as to the posture of Mr. Bogin and LaVecchia, you seem to indicate that your feeling is that if the Jury should find that there is more than one conspiracy, that that would leave Andriotis and Kirschenbaum out -- Kurschenoff, rather.

THE COURT: If their's was a separate conspiracy.

MR. SPARROW: That's right. All right, because I propose to take that posture.

rlpm follows

(continued on next page)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

ANTHONY LAVECCHIA, EDWARD BOGIN, : 73-CR-305
HERBERT KURSCHENOFF and
NICHOLAS ANDRIOTIS, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 27, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

and a Jury

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: DAVID DePETRIS, ESQ.,
Assistant United States Attorney

JAMES LA ROSSA, ESQ.,
Attorney for the defendant Lavecchia

RONALD FISCHETTI, ESQ.,
Attorney for the defendant Bogin

BARRY KRINSKY, ESQ.,
Attorney for the defendant Kurschenoff

SIDNEY SPARROW, ESQ.,
Attorney for the defendant Andriotis

THE COURT: Well, I have Mr. De Petris' requests on the accomplice charge, and I think I would have to weave into it the sentence that Mr. Krinsky has about there being a possible defect in character in the accomplice who has committed a felony, but other than that it seems to be appropriate.

MR. LA ROSSA: Your Honor will note what I gave you along the same lines.

THE COURT: Well, yours came in later. I'm not sure you did. You have a general credibility charge, which is in line with --

MR. LA ROSSA: No. 4, your Honor.

THE COURT: Well, No. 4 is the immunity charge, which is almost the same as Mr. Krinsky's No. 4, and I reserve the right to use whatever part of it I think appropriate.

Have counsel seen the form of verdict? Is that all right?

MR. LA ROSSA: I have no objection.

MR. FISCHETTI: No objection.

MR. DE PETRIS: No objection.

THE COURT: All right, I went back to using the numbers in the indictment because counsel had used them in their summations.

Now, I thought you were going to give me a

citation this morning, Mr. LaRossa, for your request on the multiple conspiracy.

MR. LA ROSSA: I dictated one to the girl, and apparently she didn't put it in last night. It's United States against Wilmer, Southern District of New York, before Judge Morris Lasker, May 1974, as approved and given to the jury.

THE COURT: I thought you were going to give me a Court of Appeals case.

MR. LA ROSSA: It wasn't my understanding, sir. See, I think there are two distinct -- see, I distinguish between the Court of Appeals ruling as a matter of law after the jury makes a factual determination. Assuming that this jury was given this charge, may it please the Court, and notwithstanding it found the defendants guilty of Count 12, I think then I would be able to go to the Circuit Court and say that as a matter of law notwithstanding the jury's verdict I want you to determine whether there are multiple conspiracies.

THE COURT: Well, if there are three conspiracies and Mr. LaVecchia was a party to all three of them, then the statements and acts of co-conspirators are admissible against him under the agency principle.

MR. LA ROSSA: That might be --

THE COURT: They are not admissible against Mr. Andriotis or Mr. Yurgchenoff unless they are parties to the same conspiracy. I don't follow your theory.

MR. LA ROSSA: The theory is that if there are more than one conspiracy within the same indictment -- in Kotteakos, Kotteakos was the -- was the -- as far as the spoke is concerned, he wasn't a spoke, he was the hub of the wheel.

THE COURT: The problem in Kotteakos was that the charge would permit acts of one set of co-conspirators to be used against the other set of co-conspirators, not that they could be used against the central man.

MR. LA ROSSA: Partially that's true, but Kotteakos was the central core in that case, Judge. He was the -- he was the center of the wheel, and he was the one that fixed the nine FHA cases, it's my recollection.

Now, what they did was they not only reversed the nine spokes, they reversed the hub of the wheel as well.

Judge, if I may just give an analogy, before you start reading what's in front of you --

THE COURT: Yes?

MR. LA ROSSA: (Continuing) -- it's very much the same as a prior similar act. What you are saying is, if I'm not paraphrasing it, is no matter whether there is a multiple conspiracy or not, as long as LaVecchia is a party in these other conspiracies they should be admissible against Mr. LaVecchia. I submit to you that that's very much the same logic as a prior similar act.

However, if your Honor accepted a prior similar act in this case with respect to Mr. LaVecchia, you would have to caution the jury that the prior similar act could be used only under certain circumstances. For example, to determine intent.

You can't use the prior similar act to determine whether or not Mr. LaVecchia committed the crime before the Court.

THE COURT: You could if it was a separate count.

MR. LA ROSSA: I'm talking about within the same count.

THE COURT: No, one of my colleagues has said that he does not approve of doing something that is wrong because somebody else has done it before.

MR. LA ROSSA: I agree with him.

THE COURT: And I don't find anything in the Vega case that justifies your interpretation of Kotteakos, and if this is the time to get an interpretation of it, let's have it here. I'm not going to give that.

MR. LA ROSSA: You will note my --

MR. FISCHETTI: Mr. Bogin joins.

MR. KRINSKY: As does Mr. Kurschenoff.

THE COURT: We have one juror missing. Shall we go ahead?

MR. LA ROSSA: Who is missing?

THE COURT: No. 2, Mrs. Ciparelli.

MR. LA ROSSA: I think we ought to give her some time, your Honor.

THE COURT: There have been delays on the subway.

MR. LA ROSSA: I understood -- Mr. Bogin was tied in a subway that was forty minutes late.

MISS DURANT: She's in the tunnel walking, I believe.

MR. LA ROSSA: I think we ought to give her some time.

THE COURT: Let's take another ten minutes and see what happens.

MR. LA ROSSA: May I respectfully take

exception to your Honor's refusal to charge 1 through 4.

May I also at this time --

THE COURT: Wait a minute. I haven't refused 1 through 4.

MR. LA ROSSA: I'm sorry. I thought you did.

THE COURT: Maybe not in ipsissima verba, but I said the general credibility charge, which is substantially what I gave, and I can't use everybody's wording.

MR. LA ROSSA: I don't care about the wording. As long as your Honor covers every aspect of No. 2, then I certainly would not except to it.

THE COURT: No. 3 is impeachment, and it is not complete because it doesn't say that you can believe as much of it as you see fit, but I will give an impeachment charge.

And No. 4 on immunity, promise of immunity, I said it is comparable to Mr. Krinsky's No. 4, which I said I was going to give. And I'll use my own language on it.

You have an exception to No. 1.

MR. LA ROSSA: With respect to No. 1 will your Honor note my exception to your failure to charge?

THE COURT: Yes.

MR. LA ROSSA: May I also at this time for the purpose of all counsel allow each of us to join in the requests that have been submitted to the Court that are applicable --

THE COURT: They will be considered submitted generally for all defendants.

MR. LA ROSSA: Fine.

THE COURT: Well, we'll resume as soon as the juror is here. If he's not here -- if she's not here at quarter of eleven we'll consider continuing.

(Recess had.)

THE COURT: All right, then I guess we are ready to proceed, subject to Mr. Sparrow coming in.

MR. FISCHETTI: He'll be in in a minute, Judge.

THE COURT: I'm not sure we'll get both summations in before 1:00. I don't know what we can do. You take what time you need, and the Government, too.

Bring the jury in.

Mr. Sparrow will be here.

(Jury in.)

THE COURT: Good morning, ladies and gentlemen.

Since there was more than one person late, we waited until everybody was here. Mrs. Ciparelli, if you are in such a shape that you think you can't give attention to matters today --

JUROR NO. 2: I'm fine.

THE COURT: (Continuing) -- tell me. I hope the ordeal won't interfere with the proceeding.

JUROR NO. 2: It was a great ordeal, but I can take it.

THE COURT: It's Mr. LaRossa's turn to sum up.

MR. LA ROSSA: May it please the Court, fellow counsel for the prosecution and the defense, Miss Forelady, ladies and gentlemen of the jury, there are a number of things we asked for in our opening, most of which you have given us already. I'm convinced your attention, an open mind, you listened and watched each witness take the stand and testify; I sincerely believe that you tried to appraise whether or not these people were telling the truth or not. I think you were aware of everything that went on in this courtroom.

Now, you heard a lot of objections and you heard a lot of arguments and you heard a lot of reasons why we believed the evidence shouldn't go in, or Mr. DePetris felt it should go in. That,

ladies and gentlemen, is advocacy, and we are all professionals, and we are supposed to be advocates, and we are supposed to represent our clients to the best of our ability.

You are not to take sides in those kinds of things. That has nothing to do with you. This is not a personality contest. You are not here to determine whether Mr. DePetris did a better job than I, or I than Mr. DePetris, or any other lawyer in this case. This is not a game. Not at all.

There has been some levity. There has been some fun. There have been some interesting things that have happened. But in a few hours you will determine Mr. LaVecchia's and the other defendants' fate, and that fate will change their lives one way or the other.

Now, you've heard a lot of talk about principals and what an indictment is, and at certain points I've had jurors say to me after a proceeding is over, "You know that legal stuff, we really didn't get terribly involved in it; some of it we didn't understand."

But let me tell you something right now: Some of these legal principles that we're talking

about are what distinguishes this country from some of the countries that our forefathers fled from. It distinguishes this country from some of the proceedings we read about in other countries, right now, where because of a person's religious belief or color they are treated in a certain manner in a criminal proceeding, where they are put into jail because of a political belief, not tried, where they are assassinated because they are on the wrong side of a political spectrum of one sort or another.

So it's not mumbo-jumbo. If it ever becomes mumbo-jumbo, then I am going to learn how to drive a truck, and that's what I'm going to do, and not do this.

Because this man stands before each and every one of you with some rights that you can't take away from him. They weren't just given to him. They weren't just created in the last few years.

And a lot of people on our juries say "I think it was because we had a liberal Supreme Court twenty years ago." It's not true. They are constitutional rights that were given to us by our forefathers, who didn't want the kind of religious or political oppressions to occur here that occurred in other countries. That caused them to

take every penny they had and go steerage, if they had to, to get to this country.

So Mr. LaVecchia and the other defendants stand before you right now presumed innocent of these charges. Not just words, not just words. That indictment is not evidence, it's nothing but a piece of paper. Not just words.

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And there are a number of ways you can handle this, because after hearing all of the testimony here and the Judge's charge and our summations, which are not evidence, you know, you can go back into that room and deliberate, and one of you can say to the other eleven, "Now let's eliminate all of this garbage that LaRossa and all the rest of them were telling us about, there's an indictment here, if the Government didn't think there was something wrong here, they wouldn't have brought this case." And you can deliberate in that manner, and therefore you can find every person who comes in to the criminal process guilty, and you can leave here and we'll never know it, but you will. You will.

You see, there are duties in a Courtroom. My duty ends the minute I'm finished with this summation. And I -- my conscience rests with the fact that I think I did the best job I could for Mr. LaVecchia. That duty is passed to you, and you took an oath here, and the oath said one thing: "I will truly try this case." It means you eliminate all bias and prejudice, what you read in the Daily News about somebody else. It means that you will do what your youngsters have created in this country over the last 20 years, a true

insight into what's wrong, that you will have the guts to say yes and no, like we are doing now about pollution, like we are concerned about the waterways.

Youngsters did this, not people in our generation. It took centuries for this country to be concerned about things like this, and finally somebody got the guts to say, "Let's do it."

And that's what you've got to do. You've got to have the guts to say, "Do I believe Mr. McMillan? Can I have Mr. LaVecchia's life depend upon what I heard in this Courtroom?" That's what it means.

"Is Mr. Russo such a man that I would base a matter of importance to me or my family on his testimony?" That's what reasonable doubt is. It isn't just a word.

Would you depend, ladies and gentlemen, upon John "Shorty" McMillan and Mr. Russo for a matter of importance to your family? Those are the words you're going to hear.

There is another perfect principle in the law. You know you can't be a little bit pregnant, you are either pregnant or you are not. And the law recognizes that a liar or a perjurer should be treated a little differently than other people. So they say this: that

where someone swears to tell the truth in a Courtroom, takes the seat and testifies, and willfully testifies falsely, you have certain options as jurors, because when one swears to the truth and lies once, the second time it becomes awfully easy, and the law recognizes that. So they say to you, "We are passing this burden to you," because before I sit down today I am going to convince you, I -- I believe most respectfully, that two men lied in this Courtroom. I'm not going to do it by supposition, I'm going to do it by words that this professional, or one of his brother stenographers, took down; both these men lied under oath in this Courtroom. And you have the right to go into that room and say, "Not me, I don't take Mr. LaVecchia's life away on that."

Let's talk about what you are going to determine today before we get into the evidence. You will recall that there was allegedly a $300,000 transaction in 1971. Mr. LaVecchia is charged in Count One and Count Two with the possession of those notes, and in Count Two with the sale of those notes.

The next two counts involve $2,500 counterfeit dollar bills --

THE COURT: Ten dollar.

MR. LA ROSSA: Ten dollar bills, I'm sorry, in June, '72, the possession and the sale.

And the last count involves what we call a conspiracy count, involving all four defendants and many other people, whom we haven't seen or heard from, some of whom you have and some of whom you haven't. And they are charged with a continuing conspiracy from 1971 until the present -- until the end date of the indictment, which I think was early 1973. The exactness of this Judge Judd will give you in his closing -- in his charge to the Jury.

So that within a few hours you are going to determine Mr. LaVecchia's fate as to each and every one of those counts.

Now let me tell you before you even start that there is not a defendant in this Courtroom that wants a compromise. If half of you believe one way or nine of you believe one way and nine of you believe the other way, don't compromise the counts. It doesn't do them any good. If you believe he is guilty, find him guilty of all counts. But if your gut feeling -- and let me go back to guts again -- if your gut feeling is he's not guilty, then have the guts to stick to that and live with it and come back out here and say so.

It's as simple as that.

Now, what kind of a man was John McMillan? Can we believe John McMillan beyond a reasonable doubt to convict Anthony LaVecchia? Or can I prove to you that John McMillan is so good that he's gotten out of every past problem that he's ever gotten into by the kind of street shrewdness that you've got to admire from a distance, that would make a wonderful movie, but can you believe him?

Let's start with what occurs in 1971. In June 1971 Mr. McMillan is arrested by members of the New York State Task Force and charged with possession of heroin and cocaine. A serious charge. The New York State Legislature passed a law not too many years ago--we all remember reading about it, I am sure -- that said that an individual who possesses a certain amount of hard drugs, like heroin, is violative of the following law, a Class A felony, which provides for a sentence up to life imprisonment.

And they did this because they recognized that in certain parts of the City there are people so addicted to heroin because they grow up on a specific block where 90 per cent of the people are addicted to heroin, and someone like McMillan brings it in by the

half kilos, divides it, cuts it, puts it into small glassine envelopes and distributes it to these people.

So they attacked the core of the problem, and they said, "Let's take someone like that and put him away for life."

And McMillan got caught. In June 1971. And there he faced a life sentence.

Is it important what he testified to here, is it important that he told you when asked by Mr. DePetris what this was all about, that it was two-eighths of a kilo? It it important to you that in 1972, testifying down the hall here, he said it was a half a kilo? Is it important to you to determine that here he admitted that it was about a half a kilo?

Now, what are you doing, Mr. LaRossa, making a big deal out of two-eighths or a half? Are you really? Because a half a kilo is one pound, one ounce. Therefore two eighths is about a half a pound.

Now, you ladies that are continually involved in buying flour and sugar and things like that might say you can hardly tell the difference between a half pound of flour and a pound and one ounce. And it's true. I don't think I could.

But we are not talking about flour, we are not

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talking about sugar. We're talking about heroin. We're talking about the kind of heroin that Shorty McMillan would take into his home, with at the time two teen-age children, about the age of 18 years the two of them were. OK? And take the heroin and cut it with lactose, milk sugar, and mix it, and weigh it on the scale, and package it in the glassine envelopes, and seal it with the sealer, and then sell it. OK?

Now what happens to Mr. McMillan, with the kind of background he's had up till 1971, which we'll talk about, what happens to him under those circumstances? How does he extricate himself from this life sentence?

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Did you hear what he said? I told them I would give him a name. I told them I would give them a name.

In return for giving them that name one night in the middle of the night, or whenever his phone rings and he tells you that members of the Task Force told him to go see a lawyer somehwere on 40th Street. Use this lawyer, who is nameless. Because it was only a few years ago. The man got him a slap on the wrist instead of a life sentence, and he can't tell you his name.

Let me put the world on notice, don't call me in the middle of the night for something like that. Who was he, was he a real lawyer, was he a member of this Task Force himself? Did they work the whole thing out so that he'd spin in and out of this Court, and not get him a day, no probation? No supervision? Go, Shorty, forget the fact that you had a half a kilo of heroin.

He conned them, and he made it. Okay?

Now, while he's conning them, while he's under arrest facing a life sentence, do you think he would be frightened enough so that he wouldn't do anything else? He testifies here that he's dealing

in three hundred dollars worth of counterfeit bills at the very same time. What fear? And you know what he said, "I knew I had it made." Those are the words we used when we asked him about Judge O'Connor sentencing him out there, "I knew I had it made." He made that one. No problem.

You see, he's made other things too. You know this man's lived with getting out of trouble. In 1963 he sticks up a beauty parlor. Armed Robbery. Gun. Not a bar and grill where there is a lot of men, a beauty parlor. He wanted to make sure none of the ladies shot back at him. And he gets caught. Okay. What does he do? He told you he was facing up to 25 years. That's a long time for Shorty, he's not about to do 25 years. Not with his street smart. So he runs to Matteawan. How? By hearing voices, by telling them that he fears suicide. The kind of things you learn in a jail. How to fake a psychiatric problem.

But here we ask him "Did you hear voices? Answer: I don't remember. Question: Were they men or women? Answer: I don't remember.

"Question: What happened during those 17 months?

"Answer: I don't remember.

"Question: Why don't you remember, Mr. McMillan?

"Answer: Because they had me under heavy medication from the day I walked into Matteawan til the day I left."

You heard that. That's why the poor man couldn't remember. Okay? I say to you he's trying to con you because that's a lie. Do you want me to prove it to you?

This is the Matteawan record. This is the Matteawan record that some doctor wrote out in 1965. Unfortunately for Mr. McMillan he didn't know what that doctor put in that report. This doctor, Meyen, puts the light to Mr. McMillan in 1965. Here's what he says:

"Since admission --" by the way, you can take this with you, you can read it, and if I am reading wrong Mr. De Petris will correct it -- "Since admission he was not a management problem. Being described as neat, clean, quiet, cooperative, sociable and interested in his surroundings." Period. Next sentence: "He works on the ward and is without medication." "He works on the ward and is without medication." Dr. Meyen lying? Did Dr. Meyen write out a false report or does McMillan think he can

con you with a lie? You know you can ignore every one of these lies. There is going to be plenty more. But read this report, because it puts the lie to him' I am going to go back to that report because there is a lot more in that, but I saw to you that McMillan conned every psychiatrist he met in that place, conned the Supreme Court Judge that declared him totally insane, and when he was ready to leave that hospital he conned them into the fact that he was sane again, they brought him back to the Supreme Court in Queens County after sticking that gun in somebody's -- at somebody in a beauty shop, and you know what he got, Zero, not a day for it. Okay?

Now, tell me that wasn't a good job. Tell me that wasn't a good job. 17 months in a hospital, relaxing in a ward somewhere instead of doing 25 in Elmira or 20 in Elmira or whatever. Not bad work.

He said the only thing they told him when he was sentenced was don't come back. You are free. You made it. Then he has the audacity to tell you that that day he learned his lesson, when O'Connor sentenced him, Judge O'Connor, Judge O'Connor from Queens, gave him the break of his life, from life

to a conditional discharge. He said I learned my lesson. That's what he told you right here, under oath. "I learned my lesson."

He learned it. You see what he learned you and I can't learn in a lifetime. Can't learn in a lifetime. Listen to what he says here under oath. "November '71 you were sentenced by Judge O'Connor. January '72, some three months after you received that conditional discharge were you dealing in heroin again?

"Answer: No.

"Question: You weren't?

"Answer: Yes, I was.

"Question: Any question in your mind?

"Answer: No.

"Question: That was after you learned your lesson that you just told us a moment ago about heroin. You mean you learned that lesson for ninety days?

"Answer: Yes."

And who did he deal with the second time? His nephew. His sister's boy. He brought him down from upstate to get involved in another heroin transaction.

Talk about making moves. So what happened? He's arrested on a new charge by Federal Narcotics Authorities this time. He's got to shift gears a little bit, he's got to convince Federal Narcotics Agents that he is okay.

They bring him in, they charge him here in this building, he knows he's got a 15 year exposure of that count. Mind you, this man hasn't done a day on any of this stuff. And you make a determination on whether he ever will when you are finished. Not a day. They bring him in here, you know what he said, he said, "The minute they got me in here I told them, I will give you a name." So what did they do? They released him on $10,000 personal recognizance bond. Now, there is no reason why you should know what that means but he told you what it meant. I mean you just sign your name. It means thatyou promise that if I don't come back I owe you $10,000. Do you put up any money? No. Does anybody sign for you? No. Con number two. Ninety days after he cons Frank O'Connor, Mr. Justice O'Connor out in Queens, he cons a magistrate and an Assistant United STates Attorney in this building and he walks out free again. To do what? To continue

dealing in heroin and cocaine? He told you through '72 what he was doing. He was using uppers and downers and LSD, cocaine, you name it. But he wants you to buy the fact that he was never drugged, never got upset by it, it never bothered his mental outlook and he remembers everything that occurred during these years with no problem at all.

He has never done a day. Do you remember when Russo was testifying on direct testimony? Do you remember when Mr. De Petris said to him "Mr. Russo, what promises have I made to you?" Russo gave the wrong answer, he said, "After I finish testifying the case will be dismissed." And he said, "I told you that?" He said "Yes."

By the way, if I am not telling you right, Mr. De Petris will correct it. And Mr. De Petris right in front of you at that point stood up andasked for a recess. Because that was the wrong answer. Will Russo's case be dismissed? You know that there are two counts that were dismissed already. Will the conspiracy count that he pleaded to be dismissed as well? Is that what's going to happen to Shorty McMillan at some point? Because you know he pleaded to that narcotics case some 15 months ago and he hasn't been sentenced. Which he admits

is highly unusual. A lot of strange things here that you have buy.

After walking out of Queens he deals in heroin in Februray, March, April, May and June until the day he's caught by the narcotics agents. Right up until that point. No different. Know why? Because he could get away with it. This man knows how to get away with almost anything.

Listen to this: He's here in this building being held for selling heroin subsequent to Frank O'Connor's sentence, where they give him a slap on the wrist. Listen to this. Talking about the $10,000 bail.

"Question: The reason you got that $10,000 was before they brought you before the Magistrate or Judge and arraigned you, you told the Assistant United States Attorney that you wanted to give up a few names, isn't that right?

"Answer: Right.

"Question: You volunteered to give up somebody's name in return for being allowed to leave the building.

"Answer: Right.

"Question: In all the crimes you have committed in 1971, 1972, 1973, have you ever spent

a day in jail for any of those crimes?

"Answer: No."

Get somebody better than him at this and I would like to meet him. He wants you to believe that he dealt in hundreds of thousands of dollars in counterfeit money in 1971 and lost money. He wants you to believe that he dealt in hundreds of thousands of dollars in counterfeit money in 1972 and made a thousand dollars. I'm telling you this man under oath is attempting to make a fool out of you.

How about the $60,000 that he made? Did he tell Agent Coppola? Agent Coppola testified here that he did. You heard him swear to it. Now, if you have to take your choice between Agent Coppola and John McMillan, whether it be in believability or going to a cocktail party with, I think there would be very little choice. Agent Coppola said he, McMillan, told him that he made $60,000 in 1971 dealing in counterfeit money. True? Or a lie?

He swore that it was. At least he swore for a while. Listen to what he said. You know, do you not, that I am reading the exact words every time I open this book. The exact words that

the man said. Here under oath. He's talking about the Coppola meeting. We're talking about December the 29th of 1972 after the arrest in Queens and the deal he makes, after the arrest and the arraignment here on the narcotics charge, where he gives up a few more names and gets out on the street.

"Question: Did you meet him in December 1972?

"Answer: Yes."

Okay. Then we go down.

"Question: Did you tell him that you admited supplying people with counterfeit ten dollar bills?" This is Agent Coppola now he meets -- "on that occasion.

"Answer: I might have. I might have.

"Question: Did you tell him that you earned approximately $60,000 in genuine currency, all of which had been squandered?

"Answer: It might have been. It might be misunderstood.

"Question: Did you tell him that?

"Answer: No, I don't believe so."

Then I show him an exhibit, P, and ask him to read it.

"Question: Does that refresh your recollection

that you told him that you earned $60,000 and squandered it?

"Answer: That would be a lie, so why would I tell it to him?"

Okay?

"Question: I don't know, Mr. McMillan, I am asking you whether you told him or not.

"Answer: Well, I didn't tell him, no.

"Question: In other words, he lied when he put that in the report, is that what you're saying" referring to Coppolla, "Answer: No, it might have been something that he misunderstood."

Then he said, "I don't remember really. I knew they were cops.

"Question: Are you telling me that Agent Coppola made that figure up?

"Answer: No, I don't know, I might have told him."

This is within pages now. He swears he didn't tell him, says he couldn't have told him because it was a lie, Coppola swears that he did tell him, and now finally he gets down, "No, I don't know, I might have told him, I told you I knew they were cops. I really don't know, I don't remember much of the conversation because I knew they were cops."

Summation-LaRossa

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MR. LA ROSSA: (continuing) Yet, knowing that they were cops, you sat in a diner and talked to them about counterfeit money? I wasn't talking to them. It was Phil that was talking and I was answering.

Listen to this. Listen to this business that they want you to buy. Sat there in the diner knowing Copolla was a cop and he talked to him about counterfeit money. Accept it, if you want; reject it, if you want. I can't do it for you.

In 1971 he was a bookmaker. Who with? A man named Ace. Who is Ace? I don't know. How long did you work with him? One year. How much did you make? Maybe ten, maybe twenty thousand dollars. What did you do? I brought him customers. How did you get paid? I got a piece of the action. What's Ace's last name? I don't know. Did you ever till this day tell anyone about Ace? No. Why? Why not Ace?

If you are going to co-operate with the Government, why don't you sit down and tell them everything you know about Ace the bookmaker, like what's his last name, like where does he live, like how did you get paid? You mean, you're going to allow Mr. McMillan to choose whom he should inform on and whom he shouldn't inform on?

Is he concerned about informing on the Aces, the organized criminal? After all, you got four businessmen there. What are they going to do, throw a balance sheet at him?

So we start to talk about tax evasion. Did he file a tax return in 1971? Did he file a tax return in 1972?

I'm going to prove to you what a shrewd man this man is. He did it right in front of you. He doesn't remember whether he filed one in '71, but he knows he didn't put down all the illicit monies. He doesn't remember about '72.

Ask him if he knew it was a crime or was he concerned about it and he said, "I wasn't before, but I am now."

Then he turns to Judge Judd, in front of you, and said, "I want to see my lawyer."

Naturally the Judge Judd allowed him to see his lawyer. You went back into the Jury Room. We all had a little recess.

Now he comes back on to the stand, a few minutes later, and he's asked the following questions:

"Did you have an opportunity to talk to your lawyer?

"Answer: Yes.

"Question: Did you have an opportunity to talk to Mr. DePetris?

"Answer: Yes.

"Question: Did you talk to him about your income tax problem?

"Answer: Yes.

"Question: Do you feel better about it now?

"Answer: Yes.

"Question: Why?

"Answer: Because Mr. DePetris told me that he didn't think I'd be indicted for tax evasion."

Right in front of you, sitting here in this Courtroom, under oath, he wiggled out of another problem that he hadn't thought about up until that time.

I'm telling you there is no one like this John McMillan doing this. He did it right in front of you. Two years of tax evasion, which we all know is a serious crime, and he worked out the deal in ten minutes, while on the stand. I wonder what would have happened if Mr. DePetris said to him, "I think you might be indicted." I wonder if he would have come back on that stand. Think about it. Think about it.

This man who made no money in '71 on counterfeit

money took his wife for fifteen days to Hawaii. However, in all the money that he's received, both illegally and by gifts, from the United States Government, by gifts, he's never filed taxes with respect to them. He's never paid taxes. He's never had an assessment filed against him. He's never had someone come and tell him, "You owe the Government money. When we pay you X amount of dollars a month, fifteen thousand dollars in fifteen months, when we pay you, a hundred ninety dollars a day for two days, you have to pay taxes on that."

You know Mr. Copolla pays taxes on the Secret Service money when he gets paid. You know a letter-carrier who works for the Government pays taxes, don't you? What kind of an employee is he that he doesn't have to pay taxes?

Listen to what he tells you, right here in the words. He said, "I asked the Marshal.

"Question: Who?

"Answer: I won't tell you his name. He told me not to put it in, not to file for it, not to pay for it.

"Question: Did he tell you to give him the money so he could pay for it?

"Answer: No.

"Question: You're not going to pay for it either, right?

"Answer: That's right," he said.

You try it. You try it. Try and do exactly what he did, but save a few dollars so you can get someone like Mr. Sparrow to defend you. Save a few dollars because you're going to need a lawyer sitting next to you.

You know, Mr. DePetris is going to tell you, I do believe, because it's stock, we hear it in every case, why these four men? Why did he pick these four men? Why didn't he pick four other men?

OK. I'm going to tell you the answer to that. No trouble at all.

You see, the Aces, that's the bookmaker, and the Vincent Pappas, the biggest narcotic dealer in New York, he said, biggest narcotic dealer in New York, he had a deal with at one occasion. He doesn't put them in. You want me to tell you why? I'll tell you why, right here in words.

You see, businessmen don't know about these kind of things. Jurors don't know about these kind of things, unless you watched the Untouchables when it

used to be on television or some television program, but we're really not sure that those kind of things exist.

However, John McMillan tells us about what he calls a sit-down. Talking about Vincent Pappa, he said, "I don't know him that well." He admits that he is the largest junk dealer in New York. He only dealt with him once.

"Question: When did you meet him?

"Answer: When I had a sit-down with somebody.

"Question: When? What year?

"Answer: Just prior to my arrest, 1972. No. Just prior to my arrest in '71."

He corrects it.

"Question: Was Mr. Pappa an arbitrator over a problem that you had?

"Answer: Yes.

"Question: Tell the Jury what you mean by a sit-down?

"Answer: Oh, I had trouble with a guy that was shylocking for him and he said he knows Vinnie and we're going to have a sit-down.

"Question: Is a sit-down basically two people who have an argument and each one reaches out for

another member of the underworld in a position of authority and everybody sits around the table and mediates, like a union contract?

"Answer: Right.

"Question: I assume this sit-down went well?

"Answer: Yes."

Who is he going to put in there, Vinnie Pappa? Who is he going to put in here, some shylock, where he won't be able to turn a corner for the rest of his life? Where he'll always have to look over his shoulder?

Hey, we have four suckers in this Courtroom, remember that. You got four businessmen here. That's why they're here.

He makes his deal. He puts in whomever he wants. So does Russo.

Russo leaves his brother out or puts Andriotis in upon a whim.

What a sin. What a sin.

And in addition to that, makes the kind of deals like you can't believe could ever exist and is in a position where he can sit down with a man called Vinnie Pappa, the biggest man in the City of New York, he said, dealing in junk, for a sit-down.

Whom do you dial to find a Vinnie Pappa? Where do you look under information, Mafia? Sit-downs?

You and I really would have a heck of a time finding who would sit down for us, right? Would you go to your clergyman? Not him. He knows where to go. He knows how to handle it. Sit-down. Right smack out of the pages of organized crime, and we're paying him, to boot. We're paying him.

Guts. Remember what I said about guts. I say it again.

Any question in your mind that Mr. Russo's brother Anthony was involved in this? Was he a participant in this?

McMillan said he was distributing counterfeit money for he and Russo. And they were partners.

Russo said, "My brother had nothing to do with it." He said that for a day or two. And then finally under cross-examination he admitted that on occasion we had a conversation about points. Why would you have a conversation about points with his brother if he wasn't involved in counterfeit money?

Have any of you ever had a conversation about points and counterfeit money?

You see, he left his brother out. And they

let him do it. That's about as close to playing God as you can get, isn't it?

Now, if he has the right to leave somebody out, does he have the right to put somebody in? You live with it.

Do you know how many meetings this man testifies to that he has dealings with Mr. LaVecchia, from 1971 to 1973? About ten.

On one occasion he said, "I met Mr. LaVecchia at his house on 18th Street." I don't remember where. I don't think he does either.

And he said, "I want a hundred thousand dollars." So he goes to LaVecchia's house or the business or something and they hand him a shopping bag, and what's in the shopping bag? Three hundred thousand dollars. Two hundred more than he asked for.

Did he put up any money? Zero. Consignment, he calls it. Consignment, like he's United States Steel.

Now, then later on when the chips get down in 1973, in February, he wants you to believe that after LaVecchia is willing to hand him with his hands three hundred thousand dollars, and hand it to him, there comes the important time, the twenty-five thousand dollars, that it had to be put into a locker, that

LaVecchia wouldn't put it into the locker unless he got the money first.

OK? Let me tell you something right now. Do you see what they've saved here? Do you know what this (indicating) is? This is garbage. Nothing but garbage. Pieces of paper. Right?

They've saved these and yet nobody brings in here the rag. Do you see any rags? Did you see the key? Why don't we see the key?

Did you see any of the money that allegedly was given to Mr. LaVecchia? The real money?

Do you mean to tell me that these Secret Service agents, all of them -- and they're all sitting all over the Courtroom here -- aren't good enough to take that real money and the key and find out whether his print was on it?

Did you hear that print man say that he examined everything here?

(continued on next page)

MR. LA ROSSA: (continued) Do you know what this is? This is allegedly the sale that Russo makes to Copolla, acting as an undercover agent.

The Government wants you to believe that this came from Mr. LaVecchia, that it came from the same printing press.

OK? Thousands of bills. Not a print on LaVecchia. Not a print on any one of these bills, these fifty thousand bills.

Where did they get this from? According to Mr. McMillan, it was handed to him by LaVecchia. You buy that, if you can live with it.

Here is one that McMillan testifies he gets from LaVecchia. Thousands of bills in here. Not a fingerprint on anything that Mr. LaVecchia touched. Here is one here about Philip Martino, hundreds of thousands of dollars go to Philip Martino and he brings it all into the agents and not a fingerprint on any one bill of Mr. LaVecchia or on the package that it was in. Or on the key. Or on the real money.

They didn't even bother to prove that that car was owned by Mr. LaVecchia, and they want you to take him away on that.

Let me ask you another question. These boxes

are the carriers for this money. Look at them. Look at this. They're hard to lift. Some of them are heavy.

How come Bogin's prints aren't all over those boxes? What did he do? Did he push them with his feet?

Now let me tell you something. Don't be suckered by this because those of us that have never had problems with the law, in a situation of authority, when someones says, "You take that, please" -- would you -- "...and tell me whether you recognize it," tell me whether you'd take that from a person if he was a Secret Service agent, you knew he had a weapon, you knew you were in custody, and let me tell you something, sir, odds to dollars, your fingerprints are on those bills now. Who --

THE COURT: I don't think there is any evidence to sustain that statement, Mr. La Rossa.

MR. LA ROSSA: I beg your pardon?

THE COURT: I don't think there is any evidence --

MR. LA ROSSA: Nothing but a logical argument from the facts.

THE COURT: All right.

MR. LA ROSSA: You know that there was nothing

on the key. Otherwise you would have heard about it.

Do you mean to tell me that you think the best evidence of that marked money is that slip of paper that was introduced with the serial numbers?

You know, they kept everything here; bills, tapes, garbage. You mean to tell me that someone couldn't come in and show you that fifty dollar bill, that the Government safe isn't sufficient to hold it? We couldn't have taken that fifty dollar bill, one fifty dollar bill and said to the fingerprint man, "Are there fingerprints on it? Whose are they?"

How come no LaVecchia's? Just an accident?

Page 659 of the transcript, another place where he says, "I want to speak to my lawyer."

January 12, 1973, a warrant is signed by a Magistrate in this building for the arrest of John McMillan. January the 12th, 1973, when he is a co-operative informer in a heroin case right in this building. The Magistrate signs the order directing agents of the Secret Service to place John McMillan under arrest.

The Narcotics agents that he's dealing with call him up, tell him to meet them at the diner and at the meet, John McMillan -- this is a little over a year ago,

January, '73 -- and they grab him and place him under arrest.

Why? Because they had heard he was going to flee. They had heard that he bought tickets.

He swore for a long time in the testimony that he wasn't going to flee, that they were wrong.

And then finally he said, "I was going skiing. I was going skiing."

It would be interesting to know what would have happened had those agents not gone on January the 12th, 1973 to that diner, where he'd be.

But he tells us, if you accept that, that he then begins to give more co-operation to the agents.

We get into February, you might recall. He said he meets LaVecchia the first week in February. Then the 13th of February. The 15th of February, that's when Mr. LaVecchia is arrested -- and the 16th of February, he comes back into this building as a witness for the Government and then he said, "We ran. My wife and I and the kids, we took two suitcases, we left the dogs in the street, we left the furniture in the street and they took us and left."

OK? Interesting, ladies and gentlemen, that he still has that sealer with him. He still has that

heat sealer with him, the same heat sealer that he used to close the glassine envelopes with the heroin in it.

Where is he? Is he involved in heroin now?

He won't tell us who he works for, but he tells us this. He didn't tell his employer that he was arrested all the times that he was. He didn't tell him that he was involved in an armed robbery and convicted. He didn't tell him that he was in Mattawan for 17 months. He didn't tell him that he was a junk dealer on more than one occasion, for months. He didn't tell him that he used narcotics. He didn't tell him that he was a counterfeiter.

And on June 9 he ups and leaves this job and has no problem coming back whenever he's finished here.

You can't do that with a normal employer, can you? Who is his employer?

What is he doing now with that heat sealer, somewhere else?

He used the word, "relocate." Better go home tonight and be concerned about where he is going to be relocated because it might be around the corner from one of you or me.

Why did he take the heat sealer? To seal food

packages?

You leave your two dogs out in the street?

Licensed to commit crimes. They want you to stamp it. They want you to take your stamp and stamp his license, "Approved." Continue paying him, never make him do a day in jail and it's OK.

You know what he said about the Army? Because you know you can prove each and every one of these instances that the man does what he has to do to get out of something he doesn't like, whether it be the State authorities for heroin, Federal authorities, counterfeiting.

Listen to what he says about the Army, right here.

"After a matter of weeks they found you were undesirable; right?

"Answer: Yes.

"Question: Now, you provided what you had to provide to make them feel you were undesirable; didn't you?

"Answer: I guess so, yes.

"Question: You did it on purpose; didn't you?

"Answer: Yes."

He got out of the Army in his own inimitable

way by proving to them that he couldn't be a soldier. He's got the smarts to know how to do it. He's done it in every case.

Tells you he had nightmares. His nightmares probably are something to do with him going to jail, he said.

"Patient was interviewed at Mattawan State Hospital and expressed evasive answers, sucidial thoughts, depressions..." I am jumping around so I don't have to read the whole thing for you.

"During the first interview he said he committed a robbery of a beauty parlor. When questioned about prior arrests, he stated I'm a bad boy. Was interviewed three weeks later. He said I don't know why everybody is against me. Talks about auditory hallucinations --"--that means you hear voices, and that goes on to say that's what it is, "hears voices, has sucidial tendencies."

He did everything that he had to do to get out of an armed robbery.

Listen to this. This report, you may take in in its entirety, and you may read it.

Rudolph T2amR3 notes follows

(continued on next page)

MR. LA ROSSA (Cont'd): I am not going to read the whole thing to you because it will take too long.

Patient was born in 1936 in New York. Started school at the age of six. Quit at 16. Did odd jobs. Prior to his last arrest, he worked as a laborer on construction. '55 he's drafted into the U. S. Army, but two months later he's discharged as undesirable. November '55, he runs away with a 17-year old girl, married in Kingston, but his father-in-law charged him with an abduction which was later dismissed. Two children resulted from the union.

His legal history lists arrests for different types of offenses, assault, robbery, carrying, possessing a dangerous weapon as a felony, felonious assaults, unlawfuly flights, abductions, burglaries, grand larceny, and violations of parole. This is back in '64, '65. To bring this up to date takes two or three more ages.

From June 9th until today, or whenever day that he was on the last time, the Government paid him $36 per day. That's a lot of money, isn't it? $36 per day.

On direct testimony he told Mr. DePetris that

he was cut off from any money in June. On direct testimony didn't he make it appear that they just got him relocated and then cut the money?

On February 16th, before a Federal Judge in this District, he swore under oath that he received no money, absolutely no money. This was on the 16th of February, 1973. Is it important that he received some money? It's important that he was willing to lie about it, isn'tit? Because Defendants' Exhibit S says that he was paid $380 for the 15th to the 19th of September.

THE COURT: You've been about an hour, Mr. Mr. LaRossa.

MR. LA ROSSA: Thank you for reminding me, sir.

Defendants' Exhibit T in Evidence, this is June, 1974. It reads:

Subsistence maintenance from June 1, 1974, to June 30, 1974, $250.

It's like a pension almost, you see. It's like for a good service, a reward, because he tells you that in January, 1974, six months before that, he sits down with the Marshals, said, "I'm okay now. I don't need any more help." "I'm self-sufficient," are the words he used. He had gotten a job the April

before.

Notwithstanding that, they give him over $2,500 from January 1st until today, tax free, as a reward? As a pension? Your money. No reason to lie?

Now, let's talk about this transcription.

I might as well tell you this, I'm going to be longer than I have been. You know, I'm longwinded. I'm trying as hard as I can to keep it down.

He tells us that on February the 13th, an agent of the Secret Service, and I apologize to you for talking as much but it is very important. This is an important, important case. Not to me or to you, but to Mr. LaVecchia and the other people there.

February the 13th, '73, they hook him up with a Kel set. And he meets LaVecchia, he says, for hours, and I talked to him.

Again on February 15th he meets LaVecchia with a Kel set and "I meet him and I talk to him for hours." There are agents who are on surveillance who say that at 3:05 they saw the two of them together and at 4:55 and at 5:10. Right up until the time that Mr. LaVecchia is arrested. You remember that? Hours and hours. And you know what

you were played? Listen to what you were played. Identify Mr. McMillan's voice for yourself. Did anybody come in here and say that was LaVecchia's voice other than McMillan? Did anybody tell you whether that was a pure transcript or something that had been fooled with? Did anybody tell you whether that technician shut it off and put it on whenever he wanted to? McMillan told you that he did. McMillan told you that he talked to Bowman in front fo the building; right? You didn't hear anything about that. Neither did he.

Listen to what you heard and if you are of a mind to, time it for the hours and hours on the 13th and the 15th.

(Tape being played.)

MR. LA ROSSA: That is your 48 hours of wires.

Okay. I'm going to try and end up quickly, because you've been very patient and you've had a bad morning. Just a couple of more things we have to talk about.

You see, we can't eliminate the other major witness, that is Mr. Russo. Even though Mr. Russo never met Mr. LaVecchia, his type of testimony is the tone that the Government has chosen to take.

So what kind of man is Mr. Russo? Well, we know one thing, that he admitted distributing counterfeit money. That he swore his brother wasn't involved, even though other witnesses have sworn that he was.

We know that he was caught. We know that on January the 16th, I think that's the date, he sits down with a man by the name of Michael Gillen, his lawyer, a former assistant U. S. attorney, Mr. DePetris, Mr. Kramer and Mr. Coppola, in the sanctity of this building, and they have a discussion.

But you see, Russo wants to tell him what he wants to tell him and nothing more than that. Okay? So Russo tells him things that he chooses to tell him, makes up things that he chooses to make up, lies outwardly about things that he decides to lie about. Leaves here, goes sees Philip Martino that evening, somewhere, sits him down and says, "Now, listen, I got a guy by the name of Michael Gillen, used to run that office or he's in that office. He knows, he's going to get me a suspended sentence or a very light sentence. And if you go along with me, back my lies up, help me perjure myself so that I don't get caught, I'll get him for you, too."

But Martino, unbeknownst to him, is working for the Government at that time, so he runs right to one of the agents and says, "Listen to what Mr. Russo just told me." And that's how we know about it. And that report was given to us after Russo testified.

More than that, you know what he said here? He said, "I'd do anything to save myself. Anything," he said. "I'd lie if it meant saving myself," and he did.

Before one perjures himself as to a material fact -- how about McMillan? Do you think McMillan perjured himself?

I'm going to show you one of the most blatant parts of perjury, that most people wouldn't remember unless you go back to the record.

McMillan testified here on June 21st. Then there was a hiatus of a number of days before Mr. DePetris asked him questions on redirect.

Now, this is the very end of McMillan, after he's been beaten, after he's admitted all of the heinous things that we've been talking about for the last few hours and they decided to add a little something extra. Mr. McMillan does. So he's asked the following questions, and please, this is very

important, listen to it carefully. This is the redirect, the very end of his testimony now, June 25th.

"Did you meet Mr. LaVecchia at any time after your arrest in January, 73?

"Answer: Yes.

"When?

"The first week in February, in 1973."

"Okay. What happened at that meeting?

"We had a talk about a man by the name of Pankowitz and LaVecchia told me" -- he tells you that Pankowitz is getting caught by the Secret Service and he got caught passing the money and now LaVecchia knows. LaVecchia knows that the Secret Service is out making buys and making arrests. Okay? But the one thing he tells, LaVecchia allegedly tells Mr. McMillan is, "I'm not buying any more counterfeit money unless the man fronts it. He comes up with the money first, because the Secret Service won't do that," he said.

This is given to you as an excuse for why he suddenly -- LaVecchia suddenly puts the money in the locker. That's a plausible excuse; right? Pankowitz got arrested and all of that business, and if you accept that, it's logical as to what happens on February 15th. Okay? But he forgot, he forgot

that he testified on June 21st. So you go back to June 21st and see what he said.

By the way, they ask him when the next time he met LaVecchia was, February 13th. The next time, February 15th, and never saw him again. One meeting in February, first week in February, about the 8th of the month. This is so important.

You heard what he said now. LeVecchia told him about the Secret Service, about the arrest of Pankowitz and it's done so that it can prove to you why the lock transaction was done. And it goes on and one about that, see?

However -- I' reach for the wrong one.

However, when we go back to before he made that up, we find this:

"Do you recall when that was? "

This is page 576, talking about something else now. Just trying to get you into perspective for it.

"Answer: January 12, 1973."

This testimony is given on June 21st. What I read to you before was June 25th.

"Did there come a time subsequent to your arrest, January 12, '73, when you met with Anthony

LaVecchia?

"Say that again.

"Did there come a time after your arrest" -- I'm reading from 576, Mr. DePetris -- "when you met Mr. LaVecchia?

"Answer: Yes. I met him in the first week in February.

"Had you met with agents of the Secret Service prior to meeting with Mr. LaVecchia?

"Yes.

"Would you relate to the Court and Jury the circumstances under which you met with Mr. LaVecchia the first week in April, first -- first week in February, '73?

"Answer: Well, I hadn't seen him for a while."

And then there are some legal arguments.

"Question: What happened?

"Answer: Well, I met Anthony. I hadn't seen him for a while. I went over by 18th Street there. He has a store there and we just sat around and talked all day.

And next question -- by the way, Mr. DePetris is asking these questions.

"Question: And what was the substance of the conversation when you met with him on that date, first week in February?

"Answer: We were talking about every little thing, you know. All the people that we didn't see for a while and stuff like that. I did not ask him about nothing else. Nothing to do with the Secret Service.

"Did there come a time when you met Mr. LaVecchia?

"Yes. The 13th of February."

Okay? Forgot about that. Four days, four days, they thought of something over a long weekend. May be tired -- tie something up on the 25th. They forgot that they asked about the 21st. Blatant absolutely. Comes into this Courtroom on his initial day of direct, had two days. Mr. DePetris said, "Look around the Courtroom. Whom do you recognize in this Courtroom?" And he looked around and he doesn't say Mr. Dogin. Doesn't say, mentions A.S. -- and he comes back the next day and he's asked, and he looks over again and this time he recognizes Mr. Dogin. Important?

Could I have the picture, please?

11 Summation - LaRossa

MR. DE PETRIS: This one?

MR. LA ROSSA: Trusty Car Service picture. I'll show you something else.

Do you remember him being asked when he met Mr. LaVecchia in his Brooklyn apartment or Brooklyn home whether or not he remembered the name of the car service that he went to?

Might not seem important to you but don't forget the man owned the car service for over a year, he said. But he's asked, "Do you remember the name of it?" He says, "No."

This is in evidence. Okay? Do you think he saw this picture upstairs on the fifth floor or downstairs on the fifth floor, where it says Trusty Car Service? Do you think that helped him overnight remember the name of the car service? Do you think that you should be asked to accept this kind of thing from day to day?

Do you think Mr. LaVecchia's future should depend upon it? You answer those questions. You determine whether or not you are going to get upset at the indiscriminate arrests of Robert and Donal LaVecchia because they were present at that store. You determine whether you're going to get upset by

the arrests of Thomas Smith and Angel Martinez at the printing place.

Let me tell you somthing. If you believe there is no doubt that Anthony LaVecchia violated the law here, if you thing I'm on my hands and knees in front of you asking for sympathy, you're wrong. I'm not going to talk about his family or anything else. That's not the way we operate in this world.

In this country you're not permitted to allow sympathy to interfere. I'm not asking you to do that. What I'm asking youto do is have the guts to abid by your oath. What you swore to do. So therefore, if you believe that there is no reason or no doubt in your mind that Anthony LaVecchia violated the law, you got to come back here and say he's guilty.. That's what the law is all about. But if McMillan and Russo make you hesitate to act in a matter of importance to you or your family, if you won't allow your family's future to depend upon his word, then you have a reasonable doubt and you got to have the guts to come back in here and say, "I don't care whether the Government's been here for two weeks or three years, that man's life is not being ruined by the McMillans and the Russos

and have the guts to come back in here and do it. Because it's easy to talk about guts. I can't think of a better word to use than that, even though it might be offensive to some of you ladies. There is not a better word to use.

If you haven't got the guts to abide by your convictions, then you live with it. I don't have to.

Thank you.

THE COURT: All right.

We will adjourn now for lunch and we will resume at 20 minutes after 1:00.

In the meantime, don't talk about the case among yourselves or with anyone else. Keep an open mind until you have heard the whole thing. Don't talk to anybody in the Courtroom at all.

Thank you.

(Jury excused.)

THE COURT: All right.

(Luncheon recess.)

AFTERNOON SESSION

FL:jm
T1pmR1

THE COURT: Mr. DePetris, what was your --

MR. DE PETRIS: Mr. LaRossa, in his summation, indicated in the testimony of McMillan on redirect about the Benjamin conversation with Mr. LaVecchia. Mr. LaRossa indicated that -- or his argument was that this was a fabrication on the part of "they," he inferred that it was at least Mr. McMillan and someone upstairs, and I would submit that I would be entitled now to go into that, and also go into the fact that no questions were asked by any of the defense counsel on cross after Mr. McMillan testified about that concerning whether or not he had ever told any agents or Assistant United States Attorneys about that before.

THE COURT: Well, you can say anything that's in the record.

MR. LA ROSSA: Which is all I said.

Let me talk about the "they," if I may. As your Honor will recall, I insistently told the Jury that on Page 659 the witness McMillan asked to see his lawyer, and then at 673 the witness asked to see his lawyer. On four different occasions the witness interrupted these proceedings, even though not a defendant in this case, and asked your Honor for permission to see the lawyer.

And on one occasion, your Honor will recall, outside the presence of the Jury did exactly the same thing. So my "they" is referring to Mr. McMillan and his lawyer, who happened to be sitting in the Courtroom throughout these proceedings, and who happened to be very emotionally involved in this thing.

MR. DE PETRIS: I might also add, your Honor, that Mr. LaRossa concerning these conversations that took place when Mr. McMillan asked to see his lawyer--Mr. LaRossa also questioned as to whether or not he had an opportunity to talk to me about these proceedings, about whatever was on his mind.

MR. LA ROSSA: On one occasion you are right. That was the time about the taxes. He said he had talked to Mr. DePetris, Mr. DePetris told him "I don't think you're going to be indicted." That was the witness' testimony. I think that he can refer to that.

THE COURT: Well, you can refer to whatever the record says.

What else did you want to do?

MR. DE PETRIS: That's all. Well, what I said, your Honor, the fact that no questions were asked.

THE COURT: Well, you can point that out, that no questions were asked, surely, when he was on cross-examination.

All right, bring in the Jury.

(Jury in.)

THE COURT: We are approaching the end, ladies and gentlemen. Mr. DePetris now has his turn at summation on behalf of the Government.

MR. DE PETRIS: May it please the Court, Mr. LaRossa, Mr. Fischetti, Mr. Sparrow, Mr. Krinsky, Madam Forelady, and ladies and gentlemen of the Jury, the proof in this case has now come to an end. I want to thank you for being patient and listening carefully to the evidence as it's developed from the witness stand and the exhibits that have been offered in evidence.

The time has now come for me to tell you what I believe the Government has proved in this case. Now, the indictment in this case charges that on or about July 1, 1971 within the Eastern District of New York, which of course is Nassau, Suffolk, Queens, Brooklyn and Staten Island, the defendant Anthony LaVecchia possessed and concealed approximately thirty thousand counterfeit ten dollar Federal Reserve notes, knowing them to be falsely made, forged and counterfeited.

You will recall that the testimony was that there was a $300,000 delivery from Mr. LaVecchia to

Mr. McMillan.

The second count refers to the transfer and delivery of that $300,000 by Mr. LaVecchia to Mr. McMillan.

The third count in the indictment charges, concerning Mr. LaVecchia, that he transferred and delivered approximately $2,500 counterfeit ten dollar Federal Reserve notes. This refers to the $25,000 that was delivered in early June of 1972 from Mr. LaVecchia to Mr. McMillan, which occurred in Brooklyn at Mr. LaVecchia's house.

The next count involving these defendants, charges that in the middle of June of 1972, on or about that date, Anthony LaVecchia and Edward Bogin transferred and delivered approximately $25,000 in counterfeit ten dollar Federal Reserve notes to John McMillan.

The next count concerns on or about late August of 1972, that Nicholas Andriotis bought and received approximately $10,000 in counterfeit $10 Federal Reserve notes, and you will recall the testimony from Dominick Russo on that.

The final count involving these defendants is that on or about and between June of 1971 and

February 15th of 1973, these defendants, together with John McMillan, who has pled guilty to the conspiracy count, Dominick Russo, who has pled guilty to the conspiracy count, Philip Martino, Albert Setford, Albert Evangelista, -- that these individuals conspired to possess, conceal, buy, sell and receive counterfeit ten dollar Federal Reserve notes.

The overt acts alleged concern the prior counts that I told you about just now, and in addition, that on or about July 1, 1971 within the Eastern District of New York, the defendant Anthony LaVecchia had a meeting with the defendant John McMillan; that also on or about July 14, 1971 the defendant John McMillan had a meeting with Albert Evangelista and Albert Setford within the Eastern District of New York.

Further, that on or about late August of 1972, the defendant Dominick Russo had a meeting with Nicholas Andriotis, and also that on or about the middle of July 1972, Dominick Russo had a meeting with the defendant Herbert Kurschenoff.

You will recall in my opening that I said to you that as the case developed from the witness stand it might be somewhat confusing because there were several pieces to this operation, there were several

pieces to this puzzle which had to be brought out individually by several witnesses, and that at the end you would have a picture of this conspiracy. Now let me explain to you what we have here: what we have here is a commercial criminal enterprise or operation. And you have heard during the course of the trial about the extent of this criminal operation and of the various participants in it, the printing, the suppliers and the distributors, an operation that existed in June of 1971 until February 15, 1973, when the area which manufactured the counterfeit money was discovered by the Secret Service.

You have also heard during the course of this trial of the several participants. Mr. LaVecchia -- excuse me, Mr. Bogin, who does business as the Beacon Printing Company at 270 Lafayette Street, and the various evidence which was found in this office on February 15, 1973.

You have heard during the course of the trial of Mr. LaVecchia, of Mr. LaVecchia's many dealings with John McMillan, his many meetings from June of 1971 until the time Mr. McMillan was arrested, and then after he agreed to co-operate with the Government and went back to Mr. LaVecchia under surveillance by the

Secret Service.

You have also heard about Mr. McMillan's activities concerning this counterfeit enterprise. You have also heard about Mr. McMillan's other activities, which I will get to in a few moments.

You have heard during the course of the trial of Mr. Setford and Mr. Evangelista. They were referred to by the witnesses I believe as Spike and Alibi. You heard how John McMillan met with them in June of 1971 and was asked by Alibi, Mr. Evangelista, if he knew where he could get counterfeit, and that thereafter Mr. McMillan transferred the majority of that $300,000 that he received from Mr. LaVecchia in 1971 to Mr. Setford and Mr. Evangelista.

You also heard how they left the conspiracy, that they were arrested in 1971 by the Secret Service.

You also heard during the course of this trial of Mr. Russo's dealings in this counterfeit operation. You heard how he received the counterfeit from Mr. McMillan, and you heard what he did with that counterfeit, who he sold it to and for what.

You also heard of Mr. Martino, Philip Martino, who Mr. Russo began to sell to in 1972, and you heard that Mr. Russo was arrested on September 6, 1972, and

that he began to co-operate.

You also heard of the participation in this operation by Herbert Kurschenoff, referred to by Mr. Russo as Herbie. You heard how in 1972, in the summer of 1972, Mr. Russo delivered to Mr. Kurschenoff two $5,000 packages of counterfeit ten dollar Federal Reserve notes in Manhattan.

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You also heard of the participation of Mr. Andriotis in this criminal operation, in this criminal enterprise. You heard how there were conversations between Mr. McMillan and Mr. Russo with Mr. Andriotis, and that a package of $10,000 was delivered to an individual by the name of Paulie, and then that Mr. Russo returned to Mr. Andriotis' place of business, the realty company, and received a quantity of genuine currency for that $10,000.

Now, you will recall that during the course of the summations of the defense attorneys, how they hammered away at Mr. Russo and Mr. McMillan on their credibility. The Government does not ask you to like these individuals. There is no question about it: Mr. McMillan is a criminal. He told you about his criminal activities on the stand.

There is no question about it that Mr. Russo admitted and has pled guilty to a Federal felony. There is no question about it that he is a criminal.

But you will recall that during the summations of the defense attorneys little mention was made of all of the surveillance that took place on February 15, 1973. The Government is not asking you to convict these men on the basis of the testimony of McMillan and

Russo alone.

There is no question about it: you have to consider the credibility of Mr. McMillan and Mr. Russo. You must examine them, examine their mannerisms while they were on the stand.

Now let me just point out a few things at the outset here concerning their credibility, and remember what I said, I'm not asking you to base a verdict of guilty on their testimony alone.

Now let me ask you this: I ask you to use your common sense. Mr. McMillan testified during the course of this trial as to several counterfeit activities, and he named many people that he dealt with during this enterprise. The defense attorneys would have you disbelieve everything that Mr. McMillan has said on that witness stand.

Now ask yourselves this: you will recall Mr. McMillan testifying on the witness stand concerning the second $25,000 transaction in 1972, in the summer of 1972, that he was at Mr. LaVecchia's house and that the package wasn't there, so Mr. LaVecchia had to place a phone call, and that he called someone.

And then there was a little dispute because Mr. LaVecchia said that he was going to have to wait

for two hours, and Mr. McMillan said he couldn't wait, and that then it was agreed that the man would come right over with the package.

Mr. McMillan and Mr. LaVecchia were in the kitchen. Someone came to the house, and Mr. LaVecchia went to let him in, and they met in the kitchen -- excuse me, in the living room.

Now ask yourselves this: if Mr. McMillan were lying about that transaction, wouldn't he have said -- ask yourselves -- wouldn't he have said that he saw Mr. Bogin? Wouldn't he have said that? Ask yourselves.

This man is a liar. Wouldn't he have said that he saw Bogin deliver the counterfeit money, the $25,000 to Mr. LaVecchia? Wouldn't he have said that?

Let me ask you something else: why wouldn't he have put in that Mr. Bogin was present at every one of the other counterfeit transactions he had with Mr. LaVecchia? Ask yourselves why, if he's lying about these transactions. Ask yourselves why.

Now, you will recall Mr. Russo being on the witness stand, and you will recall that Mr. Russo had trouble answering several questions. You will also recall that Mr. Russo testified that he could read on about a second or third grade level, and that

he couldn't write except for basically his name.

Now ask yourselves this, judge for yourselves Mr. Russo: was he confused? Ask yourselves if Mr. Russo was lying about the transactions with Mr. Kurschenoff -- let's take Mr. Andriotis for a moment -- with Mr. Andriotis, if he was lying about that transaction why did he make up -- why did he make up the story about Andriotis said "I don't want you to deliver it to me, there will be a guy down on the street, you drive down there, he'll know your car and he'll know you, and he'll stop you and ask you if you have got a package for Nicky, and then you give him the package and come back and get the money."

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Now, why would he tell it like that if he was lying? Why? Why wouldn't he say that he met with NIcholas Andriotis and that Nicholas Andriotis and he had conversations with points and that after the price was agreed upon, after Mr. McMillan came down, why wouldn't he say that he delivered the counterfeit to Mr. Andriotis in person? It didn't have to be in the realty company, could have been somewhere else, out on a street corner. Why did he say that if he's going to lie?

Is Mr. Russo intelligent enough to make up -- a story like that? Ask yourselves that.

Also, concerning Mr. McMillan, why didn't he say if these two individuals McMillan and Russo got together and decided to lie to save themselves, sure, they hope they will get a break here, but ask yourselves if they were going to lie about this, why wouldn't both of them have gone to Mr. Kurschenoff and delivered the $5,000, why wouldn't both of them have had this conversation about the points, the same as with Mr. Andriotis? Why? Why not? You have to use your common sense.

Let me give you another example: You will recall during the summations by, I believe, almost

every counsel at the defense table that they said that Dominic Russo lied about his brother and his counterfeit dealings with his brother, and what do they base that on? Ask yourselves that, what do they based it on?

They base it on the testimony of Mr. McMillan. So on the one hand they want you to believe Mr. McMillan, and on the other hand they want you to disregard everything else he said.

You will recall during Mr. LaRossa's summation he referred to all the names of people that Mr. McMillan testified about involving his other criminal activities. He referred to a Vinnie Papa, and he referred to the sit-down and he referred to Ace and all these other people. And he asked you -- what did he ask you? He asked you why he didn't testify against them. Do you recall that?

Now, what happened? You recall that during the testimony of Mr. McMillan he said that every time he met with Mr. LaVecchia it was pre-arranged. You recall that Mr. McMillan testified that he had a business relationship with Mr. LaVecchia. Ask yourselves. Mr. LaRossa said it in summation, he wouldn't even tell us where he works now. You

will recall that on February 15th Mr. McMillan met with Mr. LaVecchia and that the transaction occurred from which $25,000 was obtained at Penn Station from a locker; that after he testified -- excuse me, after he completed that transaction he was taken away that night by the Marshals Service; the next morning he came back and testified in a narcotics trial, and that thereafter, after he completed that testimony, he and his family were relocated by the Government.

I am just going to touch on a few of these points now and then we'll get to some more later. The Government expects you to examine Mr. McMillan and Mr. Russo, their credibility, but the case isn't just based on their testimony. The Government asks you to examine their testimony in the light of all of the rest of the testimony in this case, which you haven't heard too much about during the summations of the defense attorneys.

Now, let's start at the beginning of this criminal enterprise. Well, let's go back before the beginning of the criminal enterprise. The seed for this enterprise was planted back in 1968. Mr. LaVecchia in 1968 played a joke on Mr. McMillan. He handed him

a ten dollar bill and asked him for change, two fives. And Mr. McMillan gave him the two fives and took the ten and put it in his pocket. And then Mr. LaVecchia said, "It's a joke." That it was counterfeit.

Now, let's move up a little further: March of 1971, Mr. McMillan is at Mr. LaVecchia's house in Brooklyn and it's a pre-arranged meeting -- Mr. LaRossa brought that out on cross-examination. It's a pre-arranged meeting. And at that meeting while they are in the cellar Mr. LaVecchia shows John McMillan a stack of counterfeit ten dollar Federal Reserve notes.

Now, Mr. McMillan testified that he wasn't interested at that point. Now you will also recall his testimony that at that point he didn't have any buyers for counterfeit. So that seems logical, doesn't it, thathe wasn't interested?

Then three months later he meets Alibi in a bar and Alibi asks him if he knows where he can get some counterfeit money. And John McMillan says to Alibi "I will let you know, let me see, I will get back to you." So the next day, within the next day or two he calls Mr. LaVecchia. Now, why does he

call Mr. LaVecchia? Because in March of 1971 he had seen those bills in the basement. And now he has prospective buyers. So he calls Mr. LaVecchia and asks him if he can get some of the counterfeit. And LaVecchia says, "We'll see."

Then a couple of days later he calls Mr. ! -- Mr. LaVecchia calls Mr. McMillan and says he has that thing. Remember those words, "Has that thing." Let me just write them down so I don't forget.

Thereafter John McMillan goes to LaVecchia's house in Brooklyn, a couple of days later. And he sees Anthony LaVecchia and he asks him, "Okay?" "Sure." So LaVecchia and McMillan get in McMillan's car and they depart from LaVecchia's house. While in the car Anthony LaVecchia says that he has the counterfeit and it will cost nine points, and it will be on consignment. And where do they go? REmember, this is 1971. You will recall from Mr. McMillan's testimony he had a car service -- and I believe Mr. LaRo-sa pointed that out to you, that he had a car service -- now when did he have that car service? If you will recall, it was sometime in the latter part of 1972 or in 1972 at some point

Mr. McMillan testified that LaVecchia and he went to a car service at LaVecchia's direction, and this car service was on King's Highway in Brooklyn, and the name of the car service was Trusty Car Service.

I would ask you to look at Government's Exhibit 19, which was a picture taken on February 15th, 1973 at 270 Lafayette Street in this room, and I believe -- if I could just see the back for one moment -- I believe the testimony also was that there was $225,000 locked in this file cabinet and the Trust Car Service box happens to be right next to it.

Now, that's the first of many coincidences which are to follow. When they arrive at the car service LaVecchia gets out, goes into the car service and comes back with another man, who is unidentified. And then the three, McMillan, this unidentified man and LaVecchia, go to another house in Brooklyn where Anthony LaVecchia and this unidentified individual go inside, and they come out with three boxes, which were put in Mr. McMillan's trunk. Then Mr. McMillan dropped off the individual, took Mr. LaVecchia home and proceeded to his own house. And the next day he took the box out of the trunk and took it into his house. And what did he do with

it? Well, when he took it out of -- when he took it into his house and he opened it up, he said he sorted it out and mixed it up because there were -- in all that three hundred thousand dollars there were only a few serial numbers and he wanted to mix it up, so when he sold it to people they wouldn't all have the same serial numbers. And that he broke it down into $10,000 bundles.

Then he called Alibi and he met at Spike's Bar or restaurant or pizza parlor -- I think it's been testified to as a number of things during this trial -- and Alibi said to him that he would get the buyers within a day or two. And then Mr. McMillan sold $10,000 worth of counterfeit to Alibi. And he was paid within a day or two by Alibi. And he sold it for somewhere between ten and twelve points.

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Now, you will recall that he had gotten them from Mr. LaVecchia for nine points. Then Mr. McMillan also testified that both he and Alibi made some money on this first package.

Thereafter, within the next week or two, he sold another $75,000 of this counterfeit money to Alibi. Also out of this package he sold $30,000 in counterfeit to his nephews, Dennis Wieder and a couple of others, I believe. He also testified that he saw Dom, Dom Russo, at Spike's with Alibi one night, at this restaurant or bar, and that thereafter he called Russo and said to him if Alibi and Spike are charging you 17 or 18 points, I will give them to you for 12.

Now, you will recall Dom Russo's testimony: That he met McMillan in 1971 in the summer at this bar, and that he had received a couple of samples from Spike and Alibi, and thereafter he got together with McMillan and they agreed on 12 points.

You will also recall that I believe when Mr. Russo was recalled -- I believe it was the day before yesterday or perhaps yesterday, or yesterday morning, that Mr. Russo said that he had discussed points with Alibi and Spike and that after that

Mr. McMillan was offering them for 12 points. So Mr. Russo then purchased on two separate occasions $10,000 packages from John McMillan.

Now, can you -- can you follow this as it's going down: Mr. LaVecchia is giving it to Mr. McMillan, who in turn is giving it to Alibi and Spike and Dom Russo and his cousins. And you recall Mr. McMillan's cousins were arrested, so then they sort of leave the picture.

Now, Mr. McMillan sold to Mr. Russo $10,000 on a few occasions for 12 points. And Mr. Russo after that, paid Mr. McMillan for the money he owed him. So that Mr. McMillan could pay the man that he was getting it from. You see how it all flows down the chain and then back up.

Mr. Russo also testified that there came a point in time when Alibi and Spike disappeared because they were arrested. And then John McMillan disappeared. Now, ask yourselves, why did John McMillan disappear? Isn't it because he had sold to Alibi and Spike and that when they were arrested he was afraid he might be arrested, so he went back into the woodwork for a while.

Mr. McMillan also testified that he paid

for this $300,000 package on two occasions, to Mr. LaVecchia. Now, we have talked about $30,000 approximately to McMillan's cousins and $20,000 to Dom Russo, and Dom Russo in turn told you that he sold it ti, I believe John Hart, and a couple of other people. And that it was approximately $85,000 sold to Alibi and Spike, 10,000 first and then there was another 75,000.

And then there was approximately $165,000 left. And McMillan made a deal with Alibi and Spike for the whole package, for the whole $165,000, for ten points, and that out of this $165,000 package, this final package, or approximately what was left excluding all the other transactions in '71, that out of this $165,000 McMillan was paid for all of it except about 3500. And that's what Mr. McMillan was referring to when he said in '71 he didn't make much on money or he might have lost a little money, because you remember he's paying nine points for these goods and he's selling them for either ten points or twelve points.

Now, on the two occasions when Mr. McMillan paid Mr. LaVecchia for this package, the first time Mr. McMillan testified, the first time he paid

him he paid him $10,000, and that that took place on Mott or Houston or Elizabeth STreet in Manhatt[illegible]. And that time, the second time he gave him the rest.

Now, you also recall another interesting coincidence we had here, the beginnings -- the beginning of the Secret Service's entering the picture, when Alibi and Spike were arrested. You will recall that Agent Coppola testified that on July 15th, 1971 he purchased approximately $10,000 in counterfeit ten dollar Federal Reserve notes from Spike and Alibi. This is exhibit 40, I believe. Now, let me just mention one other thing here: You will also recall that Agent Coppola is presently assigned to the counterfeit division in Washington, and you will recall that one of his main duties there is to examine counterfeit currency for defects and comparison with other notes. You will also recall this one of the things Agent Coppola testified to when he examined all of these exhibits, including these boxes down here that were found at 270 Lafayette Street on February 15th, 1973, that these bills, that these bills had similar serial numbe the same serial numbers as some of the counterfeit

money in these boxes and in these other exhibits, and in the money that was obtained from Penn Station. And also he testified that all of this counterfeit, all of it, the negatives that we have in evidence here, the negatives, these negatives, were used to produce all of that counterfeit money. So now we have a connection, not just on February 1973 with these negatives, but it goes all the way back to the 1971, when the purchase was made by Agent Coppola from Alibi and Spike.

Now, we come to June of 1972. McMillan at this point has surfaced again and he sees Dom Russo and they agree to become partners and to go get some more counterfeit.

So Mr. McMillan calls Mr. LaVecchia and then he meets him and he asks for another $25,000. And a couple days later he goes to LaVecchia's house in Brooklyn and at that point he receives --in another room in the house, in one of the back rooms -- $25,000 of counterfeit ten dollar Federal Reserve notes for ten points.

Now, you will also recall that when Mr. McMillan was testifying about this particular transaction he was asked to describe that house, the lay-out of the house.

"Question: Would you describe for the jury the layout of Mr. LaVecchia's house?

"Answer: Well, you come in through a hallway, a built-in hall, go into the living room, then you make a left and the kitchen is there, and another fire is going into the bedrooms.

"Question: Can you see the living room from the kitchen?

"Answer: No.

"Question: Where did you receive the package?

"Answer: In one of the backrooms."

Now, remember you have heard all his testimony about Mr. McMillan's criminal activities. Remember that. After he receives the $25,000 package he takes it to Dom Russo's house in Queens and there they break it into $5,000 bundles.

Now, you will recall that Mr. LaRossa asked a question of you during his summation. He asked why weren't Mr. LaVecchia's prints on any of these packages. You have testified -- he said you heard Mr. McMillan testify about all the hand-to-hand dealings he had. Ask yourselves if this explains it: They broke it into packages, $5,000 packages. Do you see the size of these bags? Do you think they would

have held an entire $25,000?

Now, what happens to that $25,000 package? Mr. Russo testified that about a day or two after the $25,000 package was delivered by McMillan -- well, let me go back for a moment: Mr. Russo said that he got some samples and took them, called Herbie -- he thought he called Herbie, he wasn't sure, but he went to see Herbie, and also Phil Martino comes into the picture also: And he took a couple of samples to Herbie and he showed them to him. And that Herbie said he was interested but that the points were kind of high. But he said if you come down in price, I am interested. That's not a direct quote, but it's basically what occurred. The Russo testified that he and John McMillan went to Herbert Kurshenoff place of business in Manhattan, Mr. Esquire, a toupee shop.

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And that Mr. Mc Millan waited downstairs and here is one of the points you have to consider on credibility. Mr. Russo testified that he went up there alone and Mr. Russo testified that he met alone with Herbert Kurschenoff. That nobody else was there. So I ask you if these two men were going to lie about this transaction, wouldn't they say that they both went up there? Wouldn't they say that?

Then you would have two people actually delivering to Herbert Kurschenoff. What does Dom Russo tell Mr. McMillan at that time, this is back in 1972. This isn't when Mr. Russo is cooperating with the Government. This is when he's dealing with counterfeit money. He's dealing. At that point he tells John McMillan that there is a guy nearby who has a toupee shop and I'm going to sell him some counterfeit so they go together. And that when they get there, John McMillan stays in the car and John McMillan said that this was a tow-away zone, so somebody had to stay in the car. Herbert Kurschenoff received $5,000 of that $25,000 package. He received it from Dom Russo. Dom Russo took $5,000 up to Herbert Kurschenoff's place, and that place you

you recall was on the second floor. There was a ground level, clothing store and one flight up there was the toupee shop.

When Dom Russo came down out of that building after ten minutes he had with him genuine currency and he and McMillan each took a small portion of the money and the rest was to be used to pay the individual from whom Mr. McMillan got the counterfeit, Mr. LaVecchia. Then the testimony is that as to the rest of that counterfeit, that Phillip Martion received approximately 15, 10 to 15 thousand dollars of it and that there were a couple, two or three thousand dollars worth of bad money, poorly made. I believe Mr. Russo testified the serial numbers were crooked or when it was cut the size wasn't properly cut and so it didn't look right.

Now, after this first $25,000 was distributed, McMillan goes back to Anthony LaVecchia and asks for another $25,000, pays him for the first $25,000 and a couple of days later he gets the second $25,00. The circumstances of that transaction are that John McMillan went to Anthony LaVecchia, who is expecting to get $25,000, that it would automatically be there like the last time. When he gets there, Anthony

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Lavecchia tells him the package isn't here yet and McMillan says,"I can't wait."

They called finally to meet the other individual on the other end of the line, to bring the package over right away so McMillan waits in the kitchen.

Then an individual comes in and he meets with Anthony Lavecchia in the living room. Mr. McMillan testified that you couldn't see in the living room or the kitchen and there were small boys or a boy accompanied the individual who came and he comes in and says,"Hello," to John McMillan.

I asked you to consider this before and I ask you again to consider it, if Mr. McMillan were lying about this transaction, number one, wouldn't he say that met with Bogin and Lavecchia or wouldn't he say at least that, "I am positive that the voice I heard on February 15, 1973 was the guy who delivered that package? That's not what he said on the stand. He didn't say,"I'm positive."

Wouldn't he at least say that? He said that it sounded like the voice.

You also recall on February 15, Mr. McMillan testified he, Mr. Bogin, came up. He didn't know

him but he recognized the voice that it sounded like the guy. Wouldn't you think that if John McMillan were going to lie about this transaction, don't you think he would have given the testimony that he met with both Lavecchia and Bogin?

At any rate, the individual and the boy leave and then Lavecchia brings in the $25,000, gives it to Dom Russo. He gives it to John McMillan and he takes it to Dom Russo. They break it up again to $5,000 packages and a couple of days later, McMillan and Dom Russo go to Manhattan again to see Kurschenoff

When they get there McMillan waits inthe car and Dom Russo goes upstairs again and they discuss points and they agree on the 19 points again; that's one thing I left out.

When Mr. Russo testified he said when he went up with the first $5000 package, he testified, there was a conversation about points because they hadn't agreed on the points but finally they agreed on 19 points. There was a little bit of a conversation about the second points and then he gave Herbert Kurschenoff $5000 and Kurschenoff gave them genuine currency for that $5000.

Then he comes back downstairs and the same

thing happens with John McMillan again, they split up a little bit between them and McMillan takes the rest of it to pay Lavecchia.

The rest of the $25,000, most of it goes to Phil Martino and a couple of thousand dollars in bad money. Now, they finished with the second package. So then they order $100,000 in counterfeit from Anthony Lavecchia. Let me point one thing out here: If Dom Russo is lying about this, wouldn't it be very easy for him to say that John McMillan told me that his source was Anthony Lavecchia? Wouldn't that have been easy? And then Mr. Russo could have testified to that on the witness stand but he didn't. It didn't happen and he was telling the truth about these transactions.

The $100,000 package, John McMillan receives this in Manhattan but there is a little bit of a problem because the first night he meets with Anthony Lavecchia he didn't have it, Anthony Lavecchia didn't have the package, the man only brought one bill so they set it up for a second night.

"Question: Would you relat to the Court and jury the circumstances of this meeting taking place?

"Answer: Well, the first night I met him at

8:00 o'clock, he told me to meet him at 8:00 o'clock at University and 18th and he didn't have no money with him.

"He said the guy made a mistake and he only brought one bill so he made it for the next night again.When I met him the next night, he said the guy wasn't home. We went to a cafe uptown, 28 and 29, an all-night cafe and we had coffe there and we made a few phone calls. We left and we went back to Houston Street and he told me to wait.

"I waited for an hour, then he came back and said, 'The package is in an old car around the corner.' I went to the car and took out -- it was in a shopping bag, put it in my car and I left."

This hundred thousand dollars in counterfeit is taken to Dom Russo's house and then the testimony is that Dom Russo was taking a shower or something like that so his brother Mike goes to the car and he gets the shopping bag from McMillan and takes it into the house and puts it in the basement and thereafter the next day John McMillan and Dom Russo break up the package inthe basement into smaller packages.

Now, the testimony is about 35 or $45,000 of this counterfeit was bad. Also there is testimony

that John McMillan sold about -- sold some of this money to Phil Martino.

Now, it is taking a while to sell this $100,000 package. What happens out of this $100,000 package is that one $10,000 package goes to Nicholas Andriotis. Let's examine the circumstances:

Russo testified he knew Nicholas Andriotis from the realty company where the two of them worked, that they talked about prices and McMillan came down and they talked about prices and he believed they agreed on 14 points.

He wasn't sure but he thought it was 14 points. A few days later, about a week later or two days later, Andriotis decides he is going to take a pa-kage. Let me read from the testimony of Mr. Russo:

"Question: Directing your attentionto the end of August, 1972, did there come a time when you sold a quantity of counterfeit money on that date or or around that date?

"Answer: Around that date I sold --

"Question: To whom did you sell it?

"Answer: I sold it to -- I spoke -- Shorty came down and spoke to Nicky about it.

Q "Question: Who is that?

"Answer: Nicky Andriotis. About prices, about points, 14, 15, 16, 17 points, I believe, they got together on 14 points. Nicky spoke to me a few days later, I think it was and he said to me: Is it okay? I will take a package, $10,000.

"I says: All right.

"He told me, he says; But don't bring it here. He says: Drive down 44th Street and someone will stop you. His name is Paul. He will stop you and he will tell you, you got a package for me? Just give it to him.

"I drove down 44th Street, a guy stopped me, he knew my car and he says: You are Gary -- and you recall that Dom Russo was referred to as Gary. I said: Yes.

"He says: You got a package from Nicky?

"I said: Yes.

"I gave it to him and went back to the office.

"Question: What office?

"Answer: Menas Nastasti Realty Office. I went back there and Nicky paid me $1400 which in turn I believe I called Shorty again and told him what happened and I am not sure if I met him that day or a

later and gave him the money and split up the money.

"Question: You were talking about $1400 you received from Mr. Andriotis?

"Answer: Yes."

THE COURT: You have been about an hour, Mr. DePetris.

MR. DEPETRIS: You recall what has been happening here. The agent purchases $10,000 in counterfeit money from Phil Martino on August 24, 1972. Then on September 6, 1972, he purchased another $10,000 of counterfeit currency, ten dollar bills from Philip Martino.

You will recall the agents testimony that these packages, as well, were made from these negatives and had the same serial numbers of all these other exhibits.

Then on September 6 after Martino was arrested he agrees to cooperate and Agent Coppola and he meet with Dominick Russo and at that time Dominick Russo sells $5000 to Agent Coppola.

You will recall that AGent Coppola's testimony concerning that exhibit was that it was made from these negatives and that the serial numbers were the same as all these in the packages including some

of the plates and negatives.

Then on November 8, 1972 Russo was arrested and agreed to cooperate. Then on January 2nd, John McMillan was arrested and agreed to cooperate.

Moving to February 6, 1973, you will recall the testimony of Agent Marquez who testified he went to 257 Lafayette Street on that day and that both Beacon Printing and Beacon Sales were listed on the signs on the outside of the suite.

He said he met with Edward Bogin who was sitting behind this desk. This is where allthe counterfeit is found and he acted in an undercover capacity and pretended he was a sales man and left but he also saw the printing presses at that time which were over here.

On February 8th, McMillan meets with Lavecchia and they have a conversation. In that conversation Lavecchia and he discussed Benny and they talk about how Benny was arrested by Secret Service, how he dealt with an agent and how the agents wouldn't front money.

The next thing that happens is on February 23rd, 1973, McMillan goes to see Lavecchia and asks him for $25,000 of counterfeit and they agreed to finalize

arrangements by phone and this meeting took place at 125 East 18th Street, Beacon Sales.

You will recall there was a sign on this window here that says Beacon Sales , also, at 278 Lafayette Street. Agent Kramer testified he had two pieces of equipment with him on that day. He had a radio and tape recorder. The tape recorder was plugged into the vehicle so he couldn't hear but he had a frequency on the Kel. Most of the conversation, he said, he couldn't hear but when he passed by he saw Lavecchia and McMillan talking together and thereafter he heard on the Kel, he heard McMillan talking to the individual.

He heard him talking to him about 20 to $25,000. That's in the record, you can have the testimony reread. It wasn't just John McMillan who heard the voice.

Now, we go to February 15. A lot happened on that day. Agent Kramer first obtained $25,000 from Federal Reserve Bank genuine currency and gave them to the agents who record the serial numbers and the list was returned to Agent Kramer.

Mr. McMillan was strip-searched by Agent Kramer and a Kel was put on him. Agent Kramer briefed

the other agents where they should go to for surveillance.

They arrived at 125 EAst 18th Street at approximately 2:25. McMillan spoke to Lavecchia the night before and they agreed to meet on the 15th for the $25,000 but McMillan was to bring genuine currency Agent Kramer had given before they went to this meeting on the 15th, $2500 in genuine currency that had been prerecorded.

(continued next page.)

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Summation-DePetris

MR. DEPETRIS (continuing): At that meeting there was discussion about the money being put, counterfeit money being put in a locker. You heard the tape and the conversation. That isn't John McMillan making that up. That is a tape. Let's examine the events of the matter, because everything happened very quickly.

There comes a time when LaVecchia leaves and McMillan, you will recall, he and LaVecchia have a conversation which you heard on the tape and LaVecchia says something to the effect, I am going downtown to find a guy and see if we can put it in a locker, and I will take you there to get it.

Agent Simon observes LaVecchia leaving at about 3:25 p.m. in a blue Chrysler, 1967. Agent Kramer follows him south and radios to the agents at Lafayette Street to expect LaVecchia at that location.

Then Agent Simon sees Edward Bogin arrive. He doesn't know it is him, and that address, at 329, and this is after LaVecchia left, McMillan testified that when this individual came up to him, he asked for Anthony, and he didn't know Bogin at the time.

He was talking to Anthony LaVecchia's brother

at the time and that they both, the brother and McMillan, both told Bogin that Anthony left and said he would be back in a little while.

At that point, John McMillan walked down the street and radicd over the Kel, "I think this is the guy who bought the package in '72." At that time AGent Kramer hears that and says, take photographs of whoever is in front of the store --

MR. FISCHETTI: I object, your Honor.

That is not the testimony.

THE COURT: The jury will have an opportunity to ask for it.

MR. DePETRIS: Here it is:

"Answer: Instructed the agents whomever was in front of Beacon Sales, immediately surveillance and to take photographs and to follow wherever they went."

That is page 874.

Isn't it likely, when these photographs were taken, Mr. McMillan had not returned to where Mr. Bogin was until --? These photographs are also in evidence of Mr. McMillan and Anthony LaVecchia.

There is no fabrication here. It is just a coincidence, he had been talking with him and with

Anthony LaVecchia. At the same time this is happening, Anthony LaVecchia is seen to arrive at 270 Lafayette and he parks across the street and enters 270 Lafayette.

This is another coincidence. Just a whole host of coincidences.

Five minutes later, LaVecchia leaves 270 Lafayette and gets in his car and drives away. Agent Marquis testified to him leaving and going back to John McMillan, he testified the phone rang and Bogin went to answer it and spoke on the phone, and after Bogin came out, he left.

At that point, Agent Simon observed Bogin leaving the area and follows him and sees him meet with Anthony LaVecchia.

LaVecchia and Bogin were together three to five minutes, and the car comes around, and Anthony LaVecchia picks up John McMillan and they are followed by Agent Kramer.

While in the car moving, LaVecchia gives John McMillan a key to the locker, but they don't know where the locker is, and they stopped to make a phone call.

They got out of the car and LaVecchia made a call and McMillan testified he couldn't get the part he

wanted, so another call was made, and they found out where the locker was, and LaVecchia told McMillan it was at Penn Station.

LaVecchia dropped off McMillan Kramer picks up McMillan and they go to Penn Station.

Kramer surveils John McMillan when he goes to the locker and he pulls out Exhibit 45. It is brought back to the car, and Kramer opens it, a nd when he does, it is brown paper inside that newspaper, and inside that, the $25,000 of counterfeit.

Kramer signals for the arrest at that point but back at East 18th Street, they have to wait a couple of minutes to execute the arrest.

LaVecchia was out of the store, or goes out of the store, to the blue Chrysler,. opens the trunk, closes it and comes back to the store and at this point, the arrest was executed.

Agent Sadley testified when he went into the store and arrested Anthony LaVecchia he found money on Mr. LaVecchia and later turned that over to Agent Kramer.

Agent McIntosh testified he receivedthe keys from Provado, and instructed to search the car. He left East 18th Street and walked over to the blue

5 Summation-DePetris

Chrysler, used the keys to open the trunk, and the keys were found on Anthony LaVecchia, and in the trunk, he found $2450, which he later turned over to Agent Kramer.

Later that night, Agent Kramer examined this money.

Government's Exhibit 38 is in evidence.

From that examination, he determined one of the $50 bills that Agent Sadley recovered from Anthony LaVecchia was on that pre-recorded list.

That was the money given to John McMillan to purchase the $25,000.

Mr. LaRossa would have you believe that is a coincidence, and then he examines the $2400 found in the trunk and determines every one of those bills on that list.

Another coincidence: it is not just the testimony of John McMillan and Dom Russo.

Now we go back to 270 Lafayette Street, where Simon testified what happened.

He testified that a search warrant was obtained, arrests weremade here first, and then a search warrant was obtained and they conducted a search.

Now, what they found was this Exhibit 17 in evidence, on e of the boxes with all this counterfeit money, including fingerprints, was found in the filing cabinet.

It said Beacon Sales on this window. All this area is leased to Beacon Printing Company. $225,000 in counterfeit money locked in that filing cabinet.

In addition, $280,000 in counterfeit was found in this area, as well as another $150,000, some cut and some uncut. This is uncut. They have not cut out the counterfeit money yet.

They found the paper cutting above the file cabinets.

Remember, Mr. Bogin is doing business as Beacon Printing Company. Also, remember, no counterfeit money was found in any of these offices which were locked. Mr. Bogin when arrested was already in this area.

These are the photographs of 270 Lafayette Street. Do you recall Mr. Ball, who was the fingerprint expert of the Secret Service in Washington? Agent Kramer testified that the evidence, all of this evidence, was taken to the Secret Service office and secured.

He also testifiedthat none of this money was

ever handed to Edward Bogin. That is the only testimony concerning whether or not this money was handed to Mr. Bogin.

There is no evidence to the contrary. If you choose to believe that Agent KRamer lied when he said it was never handed to Mr. Bogin, then by all means, acquit.

You will recall Mr. Ball testified that Mr. Bogin's prints were found on these exhibits. They are available to you and on the paper on these exhibits, and on these exhibits. These are paper cutters. This is the news paper that the $25,000 was recovered from Penn Station in, in counterfeit money that was wrapped up with it.

An interesting point here is that a fingerprint here was found on the bottom side of the Scotch tape. The fingerprint was on the Scotch tape, on the sticky side.

How do you think it got there, unless Mr. Bogin packaged that $25,000 that was in Penn Station?

You see, it is not just the testimony of John McMillan and Dom Russo. There are a number of coincidences, if you can believe they are coincidences.

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Where did this $750,000 of counterfeit money come from? Did it suddenly appear in this room of Beacon Printing, Edward Bogin, also Beacon Sales? Was that a figment of John McMillan's ima ingtion?

Or Edward Bogin's fingerprints a figment of his imagination? Was Anthony LaVecchia's meeting with him on February 15tha figment of his imagination?

You will also recall, Agent Cappola's testimony, which ties a nice knot on this conspiracy, this criminal enterprise.

His testimony goes from July 10, 1971, to February 15, 1973. His testimony is and he is an expert, you heard him say you could see with a naked eye and some you couldn't see with a naked eye, and he testified these negatives, and there are fingerprints of Mr. Bogin thereon, that these negatives were used to produce all of these notes, two Martino buys, two Dom Russo buys and the Dom Russo surrender and these four boxes and this $750,000 in counterfeit, that was recovered from Mr. Bogin's office, and this $25,000 that was recovered from Penn Station, and that these plates or plates similar to these were used to make those notes, and these plates all that money contained similar defects. Also, that all this

money on the February 15th seizure, at Penn Station recovery, Dom Russo's buy, the surrender, the two purchases from Martino, the spike buy and all of those exhibits have the same serial numbers.

Mr. Fischetti in his summation asked where was the camera that took the negative?

The Testimony was, no camera was recovered from this area. If the testimony is that these negatives were used to produce all this counterfeit and we have counterfeit back in '71, is there any reason for that camera to be there, and if you have the testimony reread, you will see Agent Cappola testified that anything from a small camera to a large camera could be used by a printer to make negatives which in turn makes the plates, and which in turnmakes all the counterfeit.

(continued on following page)

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DePetris - summation

MR. DE PETRIS: (continuing) Oh, yes, one thing I almost forgot. You will recall that I asked you to remember a conversation back in 1971, when LaVecchia said to John McMillan, "I have that thing." Do you recall that?

I asked you to remember that.

If you examine this transcript -- excuse me, if you examine this tape, that portion that was played to you, you will find that he says, "We are going to put that thing in a locker, I'm going to go downtown and find out about the thing."

Now let me just return to Mr. McMillan and Mr. Russo for a couple more moments.

No question about it, they are both criminals. You wouldn't want to go out with them, neither would I, and Mr. LaRossa said he wouldn't want to, and I would assume that none of the other defense counsel would.

But we are not asking for that. We are asking you to examine their testimony. We are asking you to consider their testimony based on everything else that you have heard in this courtroom, based on those exhibits which were the figment of no one's imagination, which were found in Mr. Bogin's office.

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DePetris- summation

We are asking you to judge their testimony, their testimony on also the prints of Mr. Bogin, the surveillance of Mr. Bogin and Mr. LaVecchia on that day, on February 15, 1973, also on the testimony of Agent Cappola, which connects all of this counterfeit to the same negatives.

With that in mind, if Mr. McMillan -- Isn't it a coincidence that $750,000 of plates and negatives were found in this office, if Mr. McMillan was making all of this up? Isn't that a coincidence? Isn't it a coincidence that on that day, when John McMillan wants to purchase $25,000 on February 15th -- isn't it a coincidence that Anthony LaVecchia, when he's going to find out what happened to the package, when he's going to find out where it is, and where it is going to be put -- isn't it a coincidence that he meets with Edward Bogin? Isn't that a coincidence?

And then right after that, he comes back and picks up John McMillan, and off they go, McMillan gets the key, and after a phone call to find out which station it's at, they go and get it at Penn Station. Isn't that a coincidence?

How many coincidences does it take before you

can credit John McMillan? He didn't make that money up. He didn't make this all up. He didn't make up the prints of Edward Bodin. He didn't make up any of those.

I submit that based on the testimony of the agents and all of these exhibits, that based on that and based on this corroboration or if you want to call it that, the many, many coincidences -- that based on that, you can credit the testimony of John McMillan and Dominick Russo.

Let me just point two more things out:

Mr. Krinsky said in his summation that Dominick Russo did not testify or did not tell the Government about Herbert Kurschenoff prior to going into Grand Jury in March, 1973.

If you will examine the transcript of Dominick Russo's testimony yesterday, you will find that he was asked the question:

"Had you told the Government about Mr. Kurschenoff on January 11, 1973, prior to going into the Grand Jury?

"Answer: Yes."

What he had not told the Government about at that time was Nicholas Andriotis, and when he

was brought back in the second time, he was confronted with it. And at that point he admitted, he admitted that he had dealt with Nicholas Andriotis.

And when he came in here and testified as to those transactions, he was telling you the truth.

THE COURT: At least that's what you are asking the jury to believe. You can't give your personal opinion.

MR. DE PETRIS: Yes, your Honor.

So as you see, if you examine all of this testimony, use your common sense, use your every day experience, ask yourselves was this whole thing made up, too many coincidences have occurred, ladies and gentlemen, for this to be a fabrication.

I submit that you must find the defendants Anthony LaVecchia, Edward Bogin, Nicholas Andriotis and Herbert Kurschenoff, guilty of the crimes charged.

Thank you.

THE COURT: We'll take about a 10 minute recess before my instructions to the jury.

The jury please go back to the jury room, and still dont talk about the case.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

ANTHONY LAVECCHIA, EDWARD BOGIN, HERBERT KURSCHENOFF and NICHOLAS ANDRIOTIS, : 73-CR-305

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 27, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

and a Jury

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Let me tell people in the audience that when I give my instructions, the practice is to lock the front door, so people who are not prepared to stay for about 40 minutes should not come in.

But it's a public courtroom, and everybody is welcome.

(Recess had.)

THE COURT: Bring everybody in, please.

I have some more Xeroxed copies of the former verdict that can be distributed to counsel, and Mr. LaRossa may have one now.

All right, I think we can bring in the jury.

(Jury in.)

THE COURT: Counsel, and defendants, and Miss Lichtsberg, and ladies and gentlemen of the jury, we are now coming toward the end.

You've heard the evidence and the arguments of counsel, and it's now my responsibility to give you the instructions as to the law that applies to the case.

And it's important, just as you have been attendant during the trial, that you give close attention to this last step before you proceed to deliberate.

What I do generally is to describe first

the principles that apply to all criminal trials, then the nature of the charges in this case, and the specific rules of law that apply to those charges and to the evidence that you have heard, and finally, a few observations about the evidence and about how to reach a verdict.

Now, in an adversary system of criminal justice, it's the duty of the prosecutor to do his best to present the Government's case and the duty of defense counsel to do their best to represent their clients' interests.

I, as the Judge, enforce the rules of evidence, and you, as the jury, the judges of the facts, decide the truth or falsity of the testimony and the inferences to be drawn from it.

It's your duty as jurors to follow the law as I state it in my instructions, and to apply the law to the facts as you find them from the evidence.

(continued next page.)

Charge of the Court

If anything counsel or the Court says concerning the facts conflicts with your recollection, it is your recollection that governs. If anything counsel said about the law conflicts with what I am about to say, then my instructions govern.

To do your duty and evaluate the evidence without bias or prejudice for or against any party. The law doesn't permit jurors to be governed by sympathy or prejudice or public opinion. First, the law presumes that each defendant is innocent of crime. So the law permits nothing but legal evidence presented before the jury in the Courtroom to be considered in support of any charge.

This presumption of innocence is enough in itself to acquit a defendant unless twelve jurors are satisfied beyond a reasonable doubt of a defendant's guilt from all the evidence in the case. In this case there are four defendants, and each of them is entitled to the presumption of innocence unless and until you find an individual defendant guilty beyond a reasonable doubt on a particular count.

I will just say a few words about what the law means by a reasonable doubt. A reasonable doubt is a fair doubt based on reason and common sense, arising

from the state of the evidence or from the absence of evidence. A reasonable doubt does not mean a doubt that a juror asserts arbitrarily because it is unpleasant to perform a task of finding a guilty verdict or a not guilty verdict. It is rarely possible to prove anything to an absolute certainty, and it is not necessary that that be done. Proof beyond a reasonable doubt refers to -- proof of guilt beyond a reasonable doubt refers to a doubt such as would make you hesitate to act in your own important affairs. This rule of proof beyond a reasonable doubt operates on the whole case. It does not mean that each piece of evidence must be proved beyond a reasonable doubt. It means that the sum total of the Government's evidence must persuade you beyond a reasonable doubt with respect to a particular defendant as to a particular count, or else you must acquit.

Finding a citizen to be guilty of a felony and subjecting him to criminal penalties is a serious matter, and you can consider this fact in deciding whether you have a reasonable doubt. Nevertheless if you are convinced beyond a reasonable doubt, then you must find him guilty and not be swayed by sympathy.

Now, I will come to the indictment. An indictment, as I have said before and you have heard, is just a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, it does not create any presumption or permit any inference of guilt. The defendants have each pleaded not guilty and the indictment and these pleas. The defendants have each pleaded not guilty, and the indictment and these pleas create the issues that you are to decide.

The law does not compel a defendant in a criminal case to take the witness stand or to testify and no inference can be drawn from the failure or a defendant to testify. In fact, the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. And when you are in the jury room discussing the case, you can not talk about the fact that defendants did not testify. You talk just about the evidence that is before you.

Now, the indictment, as you have heard, is in twelve counts, but there are only six that will be submitted to you today, and that relate to to these four defendants. And I will proceed to read

those to you, and then describe the law that relates to them.

Count one charges that on or about the first day of July, 1971, within the Eastern District of New York, which includes all of Long Island and Staten Island, the defendant Anthony LaVecchia with intent to defraud, did keep in his possession and conceal approximately 30,000 false, forged and counterfeited ten dollar Federal Reserve notes, knowing the same to be falsely made, forged and counterfeited.

Now, it is not necessary to prove -- for the Government to prove that it took place exactly on July 1 or that it was exactly 30,000 notes. The figures and the dates can be approximate so long as they are close enough to give the defendant reasonable notice of what he is charged with. This is charged as a violation of Title 18 of the United States Code, Section 472 and 2. I will read you Section 472, which says, "Whoever with intent to defraud, passes, utters, publishes orsells or attempts to pass, utter, or sell, or with like intent keeps in possession or conceals any falsely made, forged, counterfeited or altered obligation or other security

of the United States, shall be fined or imprisoned." I am not repeating what the extent of the penalties is because that is not your concern. That is something that I will have to decide if there is a guilty verdict.

Count 2 charges that on or about the first day of July 1971, within the Eastern District of New York, the defendant, Anthony LaVecchia, did transfer, deliver and sell approximately 30,000 false, forged and counterfeited ten dollar Federal Reserve Notes knowing the same to be false, forged and counterfeited and intending them to be passed, published and used as true and genuine. This apparently relates to the same notes, but it refers to a different statute, Section 473 of Title 18 of the United States Code, which says, "Whoever buys, sells, exchanges, transfers, receives or delivers any false, forged, counterfeited or altered obligation or other security if the United States with the intent that the same be passed, published or used as true and genuine, shall be fined or imprisoned." And again the penalty is something for the Court to determine, if there is a guilty verdict.

The next count that effects the defendants here is count 7, which says that on or about early June 1972, within the Eastern District of New York, the defendant, Anthony LaVecchia, did transfer and deliver approximately 2,500 false, forged and counterfeited Federal Reserve notes, knowing the same to be false, forged and counterfeited and intending them to be passed, published and used as true and genuine. And that is charged as a violation of the same Section, 473, that I have read before. And again, as I have said, the date and amount need not be precisely accurate, but sufficiently approximate so that the defendant will know the charge.

Count 8 charges that on or about the middle of June 1972 within the Eastern District of New York, the defendants, Anthony LaVecchia and Edward Bogin did transfer and deliver approximately 2,500 false, forged and counterfeited Federal Reserve notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine. And this, I think, refers to the so-called second alleged transaction of $25,000 of notes.

Again, it is charged as a violation of Section 473 of the Code, which I have read to you.

And count 11 charges that on or about late August 1972 within the Eastern District of New York, the defendant, Nicholas Andriotis, did buy and receive approximately 1,000 false , forged and counterfeited Federal Reserve notes, knowing the same to be false, forged and counterfeited and intending them to be passed, published and used as true and genuine. And you may recall when I read Section 473 it begins, "Whoever buys, sells," et cetera, shall be fined or imprisoned, so the statute applies both to the seller and to the buyer of counterfeit notes.

Count 12 is the so-called conspiracy count. This charges that on or about and between June 1971 and February 15, 1973, both dates being approximate and inclusive, the defendants Anthony LaVecchia, Edward Bogin, John McMillan, Albert Setford, Albert Evangelista, also known as Alibi, Dominic Russo, Benjamin Pankowitz, Phillip Martino, Herbert Kurschenoff, Nicholas Andriotis, together with Thomas Marra, herein named as a co-conspirator but not

as a defendant, did knowingly and willfully conspire to commit an offense against the United States in violation of Title 18, United States Code, Section 472 and 473 by conspiring with intent to defraud, to possess, conceal, buy, receive, transfer and deliver substantial quantities of counterfeit ten-dollar Federal Reserve notes, knowing the same to be falsely made, forged and counterfeited and intending them to be passed, published and used as true and genuine.

Then it proceeds, "In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants whom I have named committed the following over acts. And at first it refers to the same things which were set forth in the counts I have read already. Then that on or about July 1, 1971, within the Eastern District of New York, the defendant Anthony LaVecchia had a metting with the defendant John McMillan. And again that on or about July 14th, 1971, within the Eastern District of New York, the defendant John McMillan had a meeting with the defendants Albert Evangelista and Albert Setford. Then that on or about late August 1972, the defendant Dominic

Russo had a meeting with the defendant Nicholas Andriotis, and finally that on or about the middle of June 1972, the defendant Dominic Russo had a meeting with the defendant Herbert Kurschenoff.

Now, this refers to a different section of the statute, the conspiracy section which is Section 371 and which says: "If two or more persons conspire, either to commit any offense against the United States or to defraud the United States or any agencies thereof in any manner or for any purpose, and one ore more of such persons do any act to effect the object of the conspiracy, each shall be fined or imprisoned or both."

And again, I won't give you the extent of the penalty.

Now, with each of these counts, there are what we call essential elements. And for count one, which is under 472, the possession, the elements are first, possession of the counterfeit notes, second, knowing that they are counterfeit, and third, an intent to defraud.

And possession has what we might call a special meaning in the law. It does not necessarily mean that things are in your hands. The law

recognizes two kinds of possession, actual or constructive. A person who knowingly has physical, direct control over a thing at a given time is then in full possession of it, a person who, although not in actual possession knowingly has both the power and the intention at a given time to exercise demi ion, or control over a thing, either directly or through another person or persons, is then in constructive possesion of it.

And I spoke about having to know that it is counterfeit. An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reason. And with respect to the intent to defraud, it is not necessary to show that there be an intent to defraud a specific person if there is an intent to have the currency -- have the counterfeit money used as genuine currency, there is an intent to defraud or at least you can find such.

The Government with respect to each count must prove all the essential elements. Just proving one is not enough. There must be proof beyond a reasonable doubt with respect to each of the essential elements.

With respect to the conspiracy count, the elements are a little bit different. The Government must prove, first, that there was a conspiracy existing at or about the time alleged. Second, that the accused willfully became a member of the conspiracy. And third, that one of the conspirators knowingly committed at least one of the over acts that are charged in the indictment, and finally, that the overt act was done knowingly and in furtherance of some purpose of the conspiracy.

And again, each of these elements must be proved beyond a reasonable doubt.

(Continued on the next page.)

The objective of the crime of conspiracy is an unlawful combination or agreement to violate the law. A conspiracy has sometimes been called a partnership for criminal purposes in which each member becomes the agent of every other member. That is the basic reason why the testimony of conspirators about what a defendant or another co-conspirator said or did during a conspiracy and in furtherance of the conspiracy is admissible. But the Government has the burden of proving beyond a reasonable doubt that each defendant became a member of the conspiracy and was knowingly and willfully a member of the conspiracy during the period involved.

The Government does not have to show that the parties met together and entered into some express or formal agreement, setting forth just what each one was to do, you can infer a conspiracy from the circumstances and from the conduct of the parties.

Normally a criminal conspiracy is characterized by secrecy. Conspirators don't generally reduce their agreements to writing or broadcast their plans. It is enough if you find that two or more persons implied came to a common understanding to

violate the law with respect to the counterfeit.

Frequently the only evidence available in a conspiracy case is secreted acts on the part of the alleged conspirators, which when taken together show a conspiracy to secure a particular result.

In determining whether a conspiracy existed you can consider the acts and declarations of all the alleged participants, both defendants and co-conspirators who may not be on trial here, but in determining whether a particular defendant was a member of the conspiracy, you may consider only his own acts or statements.

A defendant cannot be bound by the declarations or acts of other persons until it is first established to your satisfaction that a conspiracy existed and that the defendant became one of the members.

In order to be a member of a conspiracy a defendant does not need to know all the other members. He does not need to know all the details of the conspiracy or how the objects are to be accomplished. And here there does not need to be evidence that Mr. Kurschenoff and Mr. Andriotis knew each other or knew Mr. LaVecchia or Mr. Bogin, if you first find that they were members of the conspiracy,

and knew what was going on. Each member of the conspiracy may perform separate and distinct acts.

Mere association with someone else is not enough evidence for conviction. There has to be more than meeting and talking. The meeting and talking has to be in furtherance of the conspiratorial purpose. There must be some evidence from which you can infer the purpose of the meeting or the association and that a particular defendant was knowingly a party to a scheme to distribute counterfeit money.

The indictment charges a single conspiracy extending from June 1971 to February 15, 1973. If you find that all the counterfeit bills were printed from plates made from the same negatives that were found in 270 Lafayette Street on the night that Mr. Bogin and Mr. LaVecchia were arrested, you can find that it was a single conspiracy. It is possible for a person to be a member of a continuing conspiracy, even if he joins after it begins and rops out before it ends. If you find that there were separate conspiracies in 1971, 1972 and 1973, then what I said about the use of acts and statements of co-conspirators should be modified

because statements made in one conspiracy cannot be used against the defendant who is a party only to a different conspiracy. That would mean, for instance, that transctions and statements in 1971 and 1973 could not be used against Mr. Andriotis and Mr. Kurschenoff in connection with the sales to them that were alleged to have been made in the summer of 1972. But with respect to Mr. LaVecchia and Mr. Bogin, you can consider all statements made by persons whom you find were co-conspirators with them during the time when the statements were made or the acts were done.

Now, I come to the rules for evaluating evidence, and the first thing I will mention is that there are two types of evidence that we generally describe in Court as effecting the finding of truth or fact. One is direct evidence like the testimony of an eye-witness.

The other is indirect or circumstantial evidence, which is the proof of a chain of circumstances that logically point to the existence of certain facts. There is a lot of circumstantial evidence in here which you must evaluate.

For instances, the Government would say that the fact that some of the money whose serial numbers had been taken was found in the trunk of a car that was -- could be opened by the key that Mr. LaVecchia had when he was arrested is circumstantial evidence that he sold counterfeit money. The defendants point out that the fact that not many of the bills that were found had fingerprints on them might indicate that the fingerprints that were on them got there innocently or in some fashion which does not incriminate Mr. Bogin.

Generally, the law makes no distinction between circumstantial evidence and direct evidence. Circumstantial evidence alone can be enough to convict a defendant if you find him guilty beyond a reasonable doubt on all the evidence. Circumstantial evidence does not have to exclude every reasonable hypothesis of innocence to point toward guilt but it is necessary that you be satisfied of a defendant's guilt beyond a reasonable doubt on the basis of all the evidence in the case before you can find him guilty.

So, if you find at the end that on all the evidence it is reasonably possible that he is guilty,

you have to find a verdict of not guilty.

But if you find that the evidence points to guilt beyond a reasonable doubt, then you must find a verdict of guilty.

You have been told properly that you do not leave your common sense outside the door when you go into the jury room to deliberate. When you analyze testimony you can draw reasonable inference based on your own common sense and your general experience. But you can draw inferences only from facts that you find are proved, not from any facts that you may know from some other area. You are not confined to the bare bones of the testimony of exhibits but you cannot make a finding that is based on mere speculation or conjecture. Your verdict must be based on evidence and inferences and not on guesswork.

As you have heard, a big part of your task is the determination of credibility. You yourselves are the sole judges of the credibility of the witnesses and the weight that their testimony deserves. You should study all the testimony carefully, consider the circumstances under which each witness testified and everything which tends to

show whether he is worthy of belief. You can consider the witness's intelligence, motive, state of mind and his demeanor, his manner while he was on the witness stand.

Although we have some women on the jury I think we had only men for witnesses. You should consider the witness's ability to observe the matters as to which he has testified, whether he know what he is talking about, and whether he impresses you as having an accurate recollection of these matters. You chould consider any relationship each witness may bear to either side of the case, the manner in which the witness might be effected by the verdict and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

(Continued on the next page.)

MM/nc

THE COURT: (Continuing) If you find that a witness was lying in some respect, you can say you will not believe anything he says. If he is false in one statement you can say he is false in all but you do not have to say that.

The usual nature of cross-examination asks you to believe that some of the statements every witness has made on cross-examination were true and to use those true answers on the basis of disbelieving what he said on direct examination.

You have a complicated task and you have a right to say that part of what a witness said on the stand is true and part is not. You can consider whether a witness is mistaken in part of his testimony and be correct and truthful with respect to other parts.

Evidence that a witness said something or did something at another time which is inconsistent with his present testimony can be used to discredit or impeach his testimony. You can consider whether a witness has a motive to testify in a particular way. If a Government witness has been promised immunity, or is awaiting trial or sentence, this may have a bearing on his willingness to slant his testimony

against the defendant, or even to lie. Possible motive to lie does not mean that a witness necessarily lies.

If you believe a witness you should not refuse to convict a defendant just because the witness himself is guilty of a crime. You are judging the defendants who are on trial here. There has been a lot said about Mr. McMillan and Mr. Russo. They were accomplices, to some extent they were informers.

The law does not prohibit the use of informers. Whether you approve of their acting that way does not enter into your consideration of the case. Sometimes the Government has to rely on testimony of accomplices and persons with criminal records and sometimes in conspiracy cases, it would be difficult to prosecute without such testimony.

The Government has to take witnesses as they are. There is no requirement in a Federal Court that the testimony of an accomplice or informer or somebody with a criminal record be corroborated. You can base the conviction on uncorroborated testimony of an accomplice if in the light of all the testimony in the case you find that it is credible and reliable.

The testimony of an accomplice whould be viewed with great caution and scrutinized carefully. The fact that a person has confessed to a crime may indicate some defect of character which would enter into your evaluation of his testimony and you have a right to consider that.

I think, however, there is nothing gained by calling names. Whether somebody calls him a worm or a snake has nothing to do with whether the testimony he gave here is true or not. You are to judge it on the basis of how he impressed you, how his testimony fitted in with the case and whether you think it is or is not persuasive towards the guilty of innocence of the defendants.

For instance, you should judge whether Mr. Russo even though he was ready to lie to protect his brother and himself, or to get a job or get a license or at least avoid getting a doctor to testify, whether his heart attack had been completely cured and whether he would lie to send an innocent person to jail.

It is a serious thing for you to find a verdict of guilty in the case. There was a suggestion by the defendants that you should consider the fact that the defendants are businessmen and the witnesses are

criminals. One of the problems Federal courts have is trying to see that we do not deal with white-collar crimes on a different basis from the crimes of working men.

If these defendants are not guilty you should acquit them. If you find they are guilty beyond a reasonable doubt the fact they are business men is no excuse and you might consider that for all that counsel said about Mr. McMillan's bad character. Mr. Lavecchai talked with him for several hours on February 13 and 15 although you are asked to believe it had nothing to do with counterfeit, we have some testimony about fingerprints.

That brings up a rule about expert testimony. Normally, witnesses do not give opinions. They can only state facts. Those who have become experts in a science or a calling may state an opinion, as to relevant and material matters and may be called on to give reasons.

Therefore, you are not bound on the opinion of the expert. You can consider his extent of knowledge, the soundness for the reasons of his opinion and the credibility of the result and give such weight to fingerprint testimony as you think proper.

Your decision of the case does not depend on the number of witnesses. The fact that all the witnesses were for the Government has no significance. Your decision depends on the quality and not the quantity of the evidence.

Many of the Government witnesses were Secret Service Agents. A witness' testimony does not gain any weight or lose any weight because he is a Government agent. You should evaluate the testimony of a Government agent in the same manner as any other witness.

A Government agent can be mistaken or not see correctly or even lie and you are to determine that.

You are to decide the case solely on the evidence presented in the courtroom; that includes testimony, exhibits, stipulations and the portions of the tapes you heard.

You should disregard--I think there were a few things I struck out and told you not to consider. A Federal Judge has the right to comment on the evidence providing he makes it clear the decision on the facts is entirely the responsiblity of the jury.

Since you have to consider the evidence against each defendant separately, I think it might be helpful

to outline the basic evidentiary evidence as I see it with respect to each defendant.

The case involves whether any of the defendants in the courtroom are guilty or not guilty. Mr. McMillan and Mr. Russo are not on trial here for any crime they may have committed.

The credibility of Mr. McMillan and Mr. Russo as accomplice witnesses is important. It is more important with dealing with Mr. Kurschenoff and MR. Andriotis than it is with the other two defendants.

With respect to Mr. Lavecchia, you can infer he was a party to a transfer of counterfeit bills simply from the fact the money given to Mr. McMillan to purchase the bills was found in a car of which Mr. Lavecchia had the key when arrested, even without considering the testimony that Mr. Lavecchia had been seen opening the trunk of the car a short time before.

You would have to find some part of the alleged conspiracy took place in the Eastern District because the car was found in New York. The offense is not punishable here unless some part of the conspiracy took place in the Eastern District. That could be proved if you find that the counterfeit bills involved in the transaction of February 15, 1973 were

made from the same negatives as the bills Mr. Kramer bought from Mr. Martino on the preceding August or the bills that Agent Coppola bought from Russo.

You should also consider the possibiltiy that someone else had access to the car. There may be more than one key to a car. Somebody else may have put the money there or the Secret Service agent may have lied and they never took any serial numbers or it could be the counterfeit seized on Long Island or in Queens came from other source, somebody who had access to the same negatives found on the premises at 270 Lafayette Street.

It is for you to determine whether this and the other evidence and gaps in the evidence recited by defendants create a reasonable doubt on Mr. Lavecchia's guilt.

With respect to Mr. Bogin, you can infer he had knowing possession of counterfeit bills from the fact bills and plates were found on shelves in the office he rented and which he was occupying at the time of his arrest, even if you think his fingerprints might have gotten on the bills or items quite innocently.

It would not be necessary for you to find that Mr. McMillan actually talked with Mr. Bogin outside

the 18th Street premises on February 15.

As to Mr. Lavecchia, if that is all you were finding it on, you would have to find that some act in the alleged conspiracy occurred in this district in order to make the conspiracy properly triable here.

The same questions I raised about the bills bought by AGent Kramer or Agent Coppola out in Queens, would be part of what you might consider. You should consider, of course, the possibility that counterfeit bills and plates and negatives were put on Mr. Bogin's shelves surreptitiously by printers employed and arrested with him and released or some other printers who occupied the premises.

It is for you to determine whether these circumstances and other matters mentioned by Mr. Fischetti create a reasonable doubt with respect to Mr. Bogin.

With respect to Kurschenoff, your verdict will depend largely on the extent to which you believe Russo. Mr. McMillan's corroboration on Kurschenoff's transaction is limited to the transaction that he parked his car near the entrance of Kurschenoff's office, and Mr. Russo brought back cash in exchange

for counterfeit bills after going out of the building's out of McMillan's sight.

Mr. Russo is not a particularly reliable witness but you should judge him by facts not labels. Whether he would lie against an innocent man in order to increase his chance for leniency is a matter for you to determine in deciding whether there is a reasonable doubt.

With respect to Mr. Andrioris, Mr. Russo's testimony is confirmed to some extent by McMillan's testimony. There are discrepancies between the two that defendants' counsel mentioned, and you can consider those to disbelieve both of them.

In connection with Mr. McMillian's credibility, you can consider the testimony about transactions with Mr. Lavecchia and Mr. Bogin was corroborated by testimony and surveillance observations by the Secret Service and other evidence in the case.

MR. McMillan is a man who had difficulty for years in resisting the change to make an illegal buck. Apparently he has talked to three sets of law enforcement officers, and persuaded them when he gave them a name it was a name worth prosecuting, even that the defendant in a narcotics trial

whom he identified last year was sufficiently dangerous so Mr. McMillan should be sent to another part of the country where he would be safe from reprisal.

He may have been conning there, too. I don't know. You have to judge.

I think Mr. DePetris said two of the people he mentioned, Setford and Evnagelista, in 1971 were sent to jail according to the testimony in this case. I do not think they were sent to jail, there is no evidence they were sent to jail on McMillan's testimony, however.

It is for you to determine whether Mr. McMillan's testimony against Andriotis and other testimony was invented in order to give him another argument on pleas for leniency when he comes up for sentence before Judge Neaher on the heorin or counterfeit charge or whether it supports Mr. Russo's statement to the extent you can find guilt beyond a reasonable doubt.

I did not hear any testimony about what is necessary to produce clear fingerprints but I was impressed by the fact that after examining all this counterfeit money Mr. Ball found only seven latent prints besides those that were on, so apparently

fingerprints do not show up every time.

You were asked by defense counsel whether you were upset at the indiscriminate arrest of people not defendants here. On the other hand there was some discussions that the wrong defendants were in the courtroom. The indictment should have been against some of the people arrested and discharged.

It is not part of your test to decide whether there was probable cause for the arrest of Mr. Lavecchia's brothers or two printers in Beacon Printing.

Your question is just whether the two defendants here are guilty or not. In that connection you may consider that maybe somebody else did the crime but you do not determine somebody else is guilty.

You heard more than four hours on the testimony and I spoke maybe ten minutes on the facts. Obviously I have not tried to cover all the facts. I have tried to be fair.

You should consider all the evidence whether I mention it or counsel mentioned it. You should not consider that I have expressed any opinion on the guilt or innocence of any defendant. I have tried not to do so. It is your province to weigh the evidence and determine whether or not there is a

reasonable doubt with respect to the guilt of the defendants on any of the counts.

In the first place your verdict must be unanimous. You all have to agree on each count. You do not have to agree, there can be disagreements but we do not encourage them. It is best to discuss the evidence fully before you take a tentative vote.

If you want to see any of the exhibits introduced in evidence give a note to the Marshal and they will be sent in to you. If you want to see the counterfeit bills, a receipt will have to be signed for them. If you want the evidence read you can ask for it.

It is the Foreman's responsibility to preside over your deliberations. Part of that duty is to make sure everybody has a chance to talk and try to see not more than one person talks at one time. The foreman votes along with the other jurors. Her vote has no more importance than anyone else's. During your deliberations all of you act as judges of the facts not as partisans or advocates. In that way you are making a high contribution to the administration of justice.

You are each entitled to your own opinion but you should exchange views and listen carefully to

each other as you discuss evidence or any gaps. A juror should not hesitate to change an opinion after listening to someone else who has a more complete or more accurate judgment of the evidence.

It is your opinion that you must reach finally. You do not have to give any consideration as to the punishment. That is my responsibility. It is your duty to give separate,personal,consideration of each individual defendant. When you do so you should analyze what the evidence in the case shows with respect to that individual leaving out of consideration any evidence that was admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from evidence as to his own acts and statements and any other evidence in the case which may be applicable to him. You should find a separate verdict as to each count and I will give you a form of verdict that Miss Glicksberg can have with her to make note of.

WHile in the juryroom there will be a marshal outside. You should let him know if there are any questions you want answered or if you have reached a verdict. When you have reached a verdict,

Miss Glicksberg should give the Marshal a note that you have a verdict. She will report it verbally in the courtroom.

Each party has a right to have the jury polled so we are sure it is unanimous. I said yesterday that I will not keep you beyond 5:30. You can determine how long you think it is safe to stay. You will have a chance to do that. You have a right to return a verdict at any time with respect to any defendant about whom you have agreed if you cover all the counts.

We have not reached the climax. After I complete my instructions, counsel have a right to address me on whether I have left out anything or misspoken. If there are corrections I will bring you back for further instructions.

That does not mean you cannot discuss how long you want to stay or what evidence you want. We have been fortunate in having all the jurors here. In shorter trials I have had to use the alternates. Only twelve can deliberate. We must have all 12 jurors back tomorrow if you have not decided. I will have to excuse Mr. Greene and Miss Santi when you go back to the jury room.

If you will get your things, the Clerk will give you your cards so you can go back downstairs. My final words are to say the oath you took inthe beginning sums up your duty:

That is, without fear or favor to any man, you will well and truly try the issues between the parties according to the evidence given to you in court and the laws of the United States.

Swear the marshal.

(Whereupon, the Marshal was duly sworn bythe Clerk of the Court.)

THE COURT: Please take the jurors into the jury room.

THE FOREMAN: We discussed about this, and we were wondering if we could start tomorrow morning because now we all feel mentally fatigued.

THE COURT: Suppose you stay a few minutes and see if there are corrections I need to give you.

In that event, do not talk and I will ask Mr. Green and Miss Santi to come back tomorrow morning in case we have another holdup in the subway tunnel.

(Out of the hearing of the jury.)

MR. DE PETRIS: No exceptions, your Honor.

16 MR. LA ROSSA: I respectfully take exception to the entire charge with reference to multiple conspiracies. I take exception to the failure of the Court to charge with respect to multiple conspiracies as requested by defendants.

THE COURT: You have an exception to that.

MR. LA ROSSA: I take exception to that portion of the charge following the multiple conspiracy charge where your Honor stated, "You may consider all persons who are conspirators with Bogin and Lavecchia during 1971 and 1972. I don't think that's the law.

THE COURT: If it isn't, it should be.

MR. LA ROSSA: I take exception to your example on circumstantial evidence, which I think is both falacious and wrong, that the fact that the keys were found in Lavecchia's pocket, which opened the truck of a car, wherein $2500 in marked money was found, that is circumstantial evidence that Lavecchia sold counterfeit money to Mr. McMillan, is falacious and I take exception to it.

It is only circumstantial evidence that he controlled the vehicle where the money was held.

THE COURT: You are adopting the present Taylor rule long before Taylor, you can't put it in

and it is inference upon an inference.

Denied.

MR. LAROSSA: I think it is improper, right after that you stated, "Circumstantial evidence is sufficient to convict," and you said that right after you made that statement and the context with it and I take exception to the entire aspect of it.

Your comment to the jury with resepct to white-collar businessmen and white-collar criminals took out of context the arugment in which the businessman theme was given to the jury.

No one argued to them because they were businessmen theyshould be treated differently or acquitted. The argument was that the witness would be more apt to use four businessman as potentials in this case instead of some of the hoodlums that he sat down with.

I think that your comment that "Lavecchia spent four hours with McMillan, if he is that kind of a man, you should take that into consideration," is unfair comment.

Your statement that the credibility of McMillan and Russo is more important to Kurschenoff and Bogin is a misconception of the law.

I don't think Mr. Lavecchia can be found guilty

18 unless they believe the testimony of Mc Millan.

THE COURT: I disagree.

MR. LA ROSSA: I take exception to the fact that -- you stated after that if you found the possession of the money in the car right after you immediately were discussing the credibility of McMillan, you stated if you find the possesion of the money in the car, meaning the 2500 legitimate dollars, was attributable to Lavecchia, then in that event you may convict on that basis alone.

I find that to be beyond the law. They must determine beyond a reasonable doubt that the money was given by Mr. McMillan to Lavecchia for the purchase of counterfeit money, therefore they must determine the truthfulness of McMillan.

Your statement about Bogin having known about possession of counterfeit money, I take exception to.

Your statement about Setford and Evangelista were sent to jail --

THE COURT: There is testimony of it in the record. It is not true with respect to Evangelista but it is what the record says.

MR. LA ROSSA: Then you said not solely on the testimony of McMillan but the others. Your Honor

knows McMillan didn't testify against either one. Why did you say not solely on the testimony of McMillan? He didn't have anything to do with Setford and Evangelista's trial.

THE COURT: That's right.

I don't know if he had nothing to do with it.

MR. LA ROSSA: If you didn't say "not solely" I apologize.

MR. DE PETRIS: Page 401.

MR. LAROSSA: That's not proof they went to jail for counterfeit money.

MR. DE PETRIS: That, coupled with the fact Agent Coppola purchased $10,000 --

MR. LAROSSA: I want to say something about this, because Judge Kaufman said, "Make your point clear."

I respectfully submit that that statement that Setford and Evangelista went to jail, in the limited set of facts tthat you gave this jury is indicative that two juries believe McMillan or two Judges believe McMillan.

I don't see what relevancy it had and why give it to this jury in this tiny context. It had nothing to do with the other comments you made.

I say this with the greatest respect for you

but I have to say it because you know I always say what I think:

I think the whole statement of facts was unfair and I am sorry that you did it. I think the entire set of facts was slanted and I am sorry that you did it.

(continued next page.)

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THE COURT: I balanced each defendant with a statement of what the defendants were claiming.

Mr. Fischetti, anything?

MR. FISCHETTI: Your Honor, first of all, may I say on behalf of Mr. Bogin, I join in the exception raised by Mr. LaRossa.

THE COURT: Yes.

MR. FISCHETTI: More particularly, with the statement of facts. I'm not going to go through each and every item Mr. LaRossa has raised, just two I'd like to cover a little more thoroughly.

First of all, your Honor stated that Mr. Bogin could be convicted without the testimony of Mr. McMillan, if they didn't believe Mr. McMillan.

Count 8 of that indictment charges that Mr. Bogin and Mr. LaVecchia received $25,000 of counterfeit money in Mr. LaVecchia's home, and Mr. M McMillan testified that he heard a voice. Without Mr. McMillan's testimony on that transaction regarding count 8, there is no way in the world a jury can convict Mr. Bogin.

THE COURT: I guess it's only on the conspiracy. It's only on the conspiracy.

MR. FISCHETTI: Point 1, sir.

Second, sir, I object most strenuously to

your Honor's comments on the fingerprint testimony.

During your Honor's charge to the jury, your Honor stated that fingerprint testimony, experts testifying, that the jury is not bound by their testimony.

Then your Honor went on to say that just before you closed your remarks, that you were impressed by the fingerprint testimony, which I believe your Honor --

THE COURT: No, I said I was impressed by the fact that there were fingerprints on only a few of the bills.

MR. FISCHETTI: That's my second point, your Honor. As I recall, your Honor said that you were impressed by the fingerprint testimony and that there were only 7 latent prints, and you also said, apparently fingerprints don't show up all the time.

As your Honor knows, that was the highlight and the keystone of my defense.

Mr. DePetris never even mentioned it in his summation, and I believe your Honor did it for him.

There is no testimony here that 7 individual fingerprints were on these bills.

THE COURT: Well, Mr. LaRossa tried to argue to the jury that when he -- when he made juror No. 3

hold some counterfeit bills, that he had obtained fingerprints on the bills, and I pointed out then that I thought there was no evidence for it.

And I think I was justified in commenting on the evidence.

MR. DE PETRIS: I might also add, your Honor, that there is testimony in the record from Mr. Ball, to the fact that -- If you recall, Mr. Fischetti handed Mr. Ball an amount of counterfeit money, and he was immediately asked by Mr. Fischetti:

"Well, aren't your fingerprints on there?"

And the fingerprint expert said that not necessarily when you touch it, they don't necessarily appear on there.

THE COURT: All right, anything else, Mr. Fischetti?

MR. FISCHETTI: Yes, your Honor.

Your Honor said that there were only 7 latent prints on the bills. As I recall the testimony of Mr. Ball, he said that on these bills, there were only 7 latent prints, meaning 7 different types of fingerprints, not 7 individual prints, which is very important, Judge.

And your Honor said 7 individual prints, 7 latents prints. That's the basis of my exception

with regard to the fingerprint testimony.

THE COURT: All right.

Mr. Sparrow?

MR. SPARROW: I believe Mr. Krinsky was about to make a point with relation to the Kotteakos portion of your charge, and I will probably join in.

MR. KRINSKY: Judge, as far as the Kotteakos charge, I would submit, your Honor, that if they find that there is more than one conspiracy, and your Honor has furnished them the possibility of finding a 1971 conspiracy, perhaps a '72 conspiracy and perhaps a 1973 conspiracy, to which Kurschenoff and Andriotis would not apply, namely the '71 or '73 aspect of it, that you could not hold the acts of co-conspirators as related to the '72. I would submit, your Honor, that the charge must go further, that if the Government, in one indictment, sought to charge Mr. Andriotis and Mr. Kurschenoff in one continuing conspiracy, that if they prove three, then they must acquit Kurschenoff.

THE COURT: That's the exact opposite of the Vega case, which says there is a question whether there has been undue prejudice.

MR. KRINSKY: That's right, your HOnor. I would submit, your Honor, that under the facts of

this case there would be a showing of undue prejudice. I think it's clear, your Honor, certainly as to the 1973 aspect of it, the Government's evidence, at least as to LaVecchia and Bogin, substantially the Government argues corroborates McMillan's story in the light of all this that's seized on the 15th of February, 1973. That can have a very damaging spillover effect to Andriotis and Kurschenoff in light of thejury saying to themselves, "Well, that corroborates McMillan as to all of his story."

And I would submit, your Honor, that to try Kurschenoff and Andriotis together with LaVecchia and Bogin under the way the case came out, if they find there is more than one conspiracy, there is no way they are going to be able to separate 71 and 73 and say, "that doesn't apply to Kurschenoff," so I would request the Court to charge that if they find more than one conspiracy, that they must acquit Kurschenoff.

THE COURT: All right, motion denied.

MR. KRINSKY: I would also except to the portion of the Court's charge, which related to the aspect that Mr. LaRossa referred to, dealing with the business men. Certainly that was not raised by

myself in relation to Mr. Kurschenoff, and I do think that the context Mr. LaRossa used it in was different than the context that the Court referred to it in the charge.

I do think that it's unfair to Mr. Kurschenoff.

Mr. LaRossa was trying to make a point that what can these men do but throw a balance sheet at Mr. McMillan, whereas Ace, and the other hoodlums could possibly cause him harm.

THE COURT: He said these are businessmen, they are not hoodlums, and to acquit them.

MR. LA ROSSA: That's not what I said.

THE COURT: Well, it's the import of it.

MR. LA ROSSA: No, if it please the Court, it's not, most respectfully. I think either you misunderstood me or misheard.

THE COURT: All right.

MR. KRINSKY: The only other thing I would except to, Judge, is the fact of the aspect of the Court's charge which related to Setford and Evangelista being sent to jail in the context of the fact that your Honor referred to Mr. McMillan playing some role. I'm not sure of the Court's exact words, some role in Setford and Evangelista going to jail, whether it was not entirely due to Mr. McMillan.

And if the facts are, -- I don't know, if the facts are that Mr. McMillan did not, in any way, testify at a trial against Setford and/or Evangelista, which I think is true, then I think that it's unfair, and I think that I would request the Court to instruct the jury that Mr. McMillan did not testify at a trial of Setford or Evangelista, because then the jury is led to believe that McMillan testified before, and at least one or two juries or one or two judges did ratify McMillan, and it may have some effect on this jury.

So those are my exceptions, your Honor.

THE COURT: Well, McMillan sold directly or indirectly to Evangelista and Setford.

MR. KRINSKY: Yes, but that's a far different thing, your Honor, than him testifying against them and a jury finding them guilty on the basis of McMillan's testimony.

THE COURT: All right.

MR. KRINSKY: Did Setford and Evangelista plead guilty?

THE COURT: They pleaded guilty.

MR. KRINSKY: So there was no testimony by McMillan against either of them, so no jury has had a chance to evaluate Mr. McMillan.

THE COURT: I didn't say they did.

All right, Mr. Sparrow?

MR. SPARROW: If your Honor pleases, I should first like to adopt for Andriotis, all the arguments just submitted to the Court by Mr. Krinsky, and I presume your rulings as to Andriotis would be the same.

THE COURT: Yes.

MR. SPARROW: For which I would respectfully except, sir.

Now, I have an additional exception, and that would be to that portion of your Honor's charge wherein you did deal with the Kotteakos doctrine, primarily because of the fact that in your prefatory remarks as to the possibility of multiple conspiracies, you suggested by the fashion in which you delivered the charge that the jury could well interpret the testimony pertaining to the existence of plates in '71, from which allegedly the counterfeits of '72 and '73 were printed, might tie them -- that is Bogin and Mr. LaRossa's client, LaVecchia, -- to that conspiracy as a continuing thing, and thereafter, you made reference to the possibility of separate conspiracies in '71, '72 and '73.

I am asking your Honor to charge the jury

that from the testimony in this case, they could -- and your Honor had suggested in your charge a number of times, what they could determine -- they could determine that there were, in fact, separate conspiracies in 1971, '72 and '73, and that if they should so find in the acts of specific evidence as against Andriotis and Kurschenoff, that they were not participating in such overall conspiracies, they would then have to acquit.

THE COURT: All right, motion denied.

MR. SPARROW: I respectfully except, sir.

THE COURT: Bring in the jury.

(Jury in.)

THE COURT: Miss Lichtsberg, and ladies and gentlemen, I have three matters to mention.

First, when I said that you could find guilt of Mr. LaVecchia and Mr. Bogin without needing the testimony of Mr. McMillan and Mr. Russo, I was speaking about the conspiracy count and not with respect to the substantive counts on which Mr. LaVecchia and Mr. Bogin are charged.

On those, which are the actual sales, you would need it.

Second, when I spoke about the inference you could draw from the $2450 being found in the trunk

that was opened with the key that Mr. LaVecchia had, I elided part of what your duty is. You must find not only that the money was there, but that the money was received by Mr. LaVecchia in exchange for the counterfeit currency.

And you will determine whether that's a fair inference, or what you need in order to establish that inference.

Finally, I thought I said that with respect to the testimony that Mr. Evangelista and Mr. Setford were in jail, that it was not as a result of Mr. -- that there was no testimony that this came by virtue of testimony given by Mr. McMillan.

Counsel say I said, "Not solely on the basis of his testimony." There is no evidence that Mr. McMillan testified against Mr. Setford or against Mr. Evangelista.

I think that's all that needs to be corrected. Now I'll accede to your request and let you all go home.

You are at a crucial stage now. You have heard everything, you are ready to decide, but don't talk about it in little groups tonight, don't try to get any ideas at home about what weight to give the particular things, and come back tomorrow

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ready to proceed with your deliberations, and I'll have Mr. Green and Mrs. Santi come back and wait until we see whether all the 12 regular jurors get here.

Will you start at 9:30 tomorrow, or would you rather wait until 10?

JUROR NO. 2: 10 o'clock is better. The trains are rough.

THE COURT: All right, 10 o'clock. You can't start until everybody is here.

JUROR NO. 2: 10 o'clock or 7 in the morning.

THE COURT: All right.

Yes, Mr. Cimenti?

JUROR NO. 3: I wanted to ask the Forelady something.

THE FOREMAN: Oh, yes, we are wondering if we are supposed to deliberate on 6 counts.

THE COURT: Oh, didn't I give you the form of verdict?

There are 6 counts, and the numbers are not consecutive, because there are some left out. You can leave that in the jury room, I think it will be safe tonight.

And I think you are ready to go now.

If you are not through by lunchtime, what I

normally do is to have you put in an order around 11 o'clock, and we can have some things sent in from a nearby delicatessen, and you can continue in the afternoon. And while I would be hearing other matters, I would interrupt them at any time that you need any testimony read or have any questions.

All right, goodnight.

(Jury out.)

MR. LA ROSSA: May I take exception to your supplemental charge as well?

THE COURT: All right.

MR. LA ROSSA: I take exception to all three of the supplemental charges you have given to the jury.

MR. PISCHETTI: I most respectfully join, your Honor.

(Whereupon at 4 o'clock P.M. the case was adjourned to the next day.)

* * * * * * * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

ANTHONY LAVECCHIA, EDWARD BOGIN, HERBERT KURSCHENOFF and NICHOLAS ANDRIOTIS, : 73-CR-305

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

June 28, 1974

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

and a Jury

WINFRED D. LEWIS
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.,
Assistant United States Attorney

JAMES LA ROSSA, ESQ.,
Attorney for the defendant Lavecchia

RONALD FISCHETTI, ESQ.,
Attorney for the defendant Bogin

BARRY KRINSKY, ESQ.,
Attorney for the defendant Kurschenoff

SIDNEY SPARROW, ESQ.,
Attorney for the defendnat Andriotis

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THE COURT: Let me just put on the record now that everybody is here, first that two of the jurors were a little late in arriving, but the last one was here about twenty after ten. I've excused the two alternates and the Marshal reported that the jurors began deliberation; luncheon menus were sent in and the lunch has been ordered and has not arrived. It was about five or ten minutes ago that I received a note from the Jury with some questions about Mr. Andriotis and Mr. Kurschenoff, and Mr. Russo's testimony or knowledge about them and I have given the June 20th minutes to defense counsel to look at.

MR. LA ROSSA: On Page 394 and 395 on direct, they talk about both Mr. Andriotis and Mr. Kurschenoff.

THE COURT: My note shows that Mr. Russo said that he had known Mr. Kurschenoff for 15 years, ten to fifteen years and he had known Mr. Andriotis two years since he worked --

MR. LA ROSSA: Since he went to work in the real estate place.

THE COURT: But he meant Russo.

MR. LA ROSSA: That's Russo's testimony.

MR. DE PETRIS: 394 and 395. I don't believe we have the transcript when he returned to the stand.

MR. KRINSKY: Your Honor, I would request that

the Court, when the Jury comes back, in light of the question that was asked, the questions that were asked, charge the Jury, charge whatever language the Court would think appropriate; number one, that merely knowing a co-conspirator certainly is not enough to convict someone of being involved in a conspiracy; and second, I would request a charge on guilt by association, they are not to convict somebody just because they know a co-conspirator.

THE COURT: I told them that. I might make some reference back to it.

MR. KRINSKY: I would appreciate it, in light of the question.

MR. DE PETRIS: I wouldn't believe that would be necessary, in that your Honor has already instructed them and the fact that they have asked specific questions.

THE COURT: Do you want us to proceed now or do you want to wait until Mr. Sparrow arrives?

MR. ANDRIOTIS: Can we wait a little while?

THE COURT: Why don't I just bring them in and tell them the answers on the Kurschenoff questions and tell them we are waiting for Mr. Sparrow.

MR. ANDRIOTIS: All right.

THE COURT: All right, very well. Bring in the

Jury.

(Whereupon Jurors entered Courtroom, are now seated in the Jury Box.)

THE COURT: Good morning, ladies and gentlemen, I'm glad our original twelve was able to get here today. Mr. Sparrow has just arrived from another engagement and hasn't seen your questions, maybe I'll take a little moment at the side bar to tell him what has taken place.

(Off the record discussion.)

THE COURT: Now, your first question was whether Mr. Andriotis is owner, or manager, of the real estate and the indication seems to be -- I'll read the various minutes later on, that he's not the owner or manager. "Was he involved in the employment of Russo?" There is no testimony that he was so involved.

Three, "How long does Andriotis know Russo?" and on that, and the question was -- well, I'll read the part that relates to Mr. Kurschenoff.

Page 395, Mr. Russo was asked, how long have you known Mr. Kurschenoff?

"Answer: Oh, about ten, ten, fifteen years I know him."

"Question: And Mr. Andriotis?

"Answer: About two, two years since I went to work in the real estate business."

Then again at Page 411 he was asked:

"Question: You mentioned you know Mr. Andriotis?

"Answer: Yes.

"Question: How long have you known him, did you say?

"Answer: Since I'm working in the real estate office, which is about two years, about two years.

"Question: Are you working there now?

"Answer: No, I am not working there now."

And at Page 458, when Mr. Russo was asked by Mr. Krinsky:

"Question: Did you tell your employer at the real estate company that you couldn't read?

"Answer: My employer from the real estate company knows that I cannot read and write."

At Page 473 on cross-examination of Mr. Russo by Mr. Sparrow:

"Question: You were arrested on November 8,1972, weren't you?

"Answer: Yes.

"Question: At that time you were still working for the real estate agency?

"Answer: Yes.

"Question: As a matter of fact, so was Nick Andriotis working there at the same time?

"Answer: Yes."

I think that's all that's relevant on these things. I take it you are proceeding in line with what I said, knowing a person is no proof of conspiracy, it has to be more than that.

Your fourth question, "Does Russo know Andriotis prior to Russo's employment at the real estate?" There is no proof that they knew each other one way or the other. The evidence may be that he did not know Andriotis before he went to the real estate company.

Your fifth, "How long did Don Russo claim to have known Kurschenoff?"

Six, "Does Don Russo claim to know Kurschenoff prior to counterfeit dealings and the counterfeit dealings alleged to have been from 1971 to 1973", and Mr. Russo said he knew Mr. Kurschenoff ten or fifteen years, which would place it before.

I think that answers your questions.

The lunch is on the way, we don't just know when it will arrive and I'll tell counsel they can go out and take an hour when your lunch arrives so that

they will be available if you have any questions beforehand and can get their own lunch without worrying about their being summoned back. You can go back to the Jury Room.

(Whereupon jurors were excused.)

THE COURT: I would like the Clerk to mark as Court Exhibits the request to charge so that they will be in the record if they become important. First Mr. Kurschenoff's, which was handed to me and next the Government's, and then Mr. LaVecchia's, and I'll go back to chambers until we get another note or until we are informed by the Marshal that the lunch has arrived, when I suggest everyone go out and get lunch. We'll keep them waiting until an hour has passed, if a note comes before there has been a reasonable time for counsel to get lunch.

(continued on next page)

AFTERNOON SESSION

THE COURT: All right, I have a note from the jury saying that they have reached their decision, so I'll have the jury come in.

(Whereupon jurors entered Courtroom and are now seated in the jury box.)

THE COURT: Miss Glickberg, I have your note that "We have reached our decision." Tell the Court and counsel what the verdict is. You can read from there.

MISS GLICKBERG: We the jury find that Anthony LaVecchia, Nicholas Andriotis, Edward Bogin, Herbert Kurschenoff were guilty of all counts.

THE COURT: Does counsel want the jury polled.

MR. LA ROSSA: Please.

THE COURT: Do that please.

THE CLERK: Ladies and gentlemen of the jury you say you find the defendant Anthony LaVecchia guilty on Count 1, Anthony LaVecchia guilty on Count 2, Anthony LaVecchia guilty on Count 7, Anthony LaVecchia and Edward Bogin guilty on Count 8, Nicholas Andriotis guilty on Count 11 and Anthony LaVecchia, Edward Bogin, Herbert Kurschenoff and Nicholas Andriotis guilty as to Count 12. Juror

number 1, is that your verdict?

JUROR NUMBER 1: Yes.

THE CLERK: Juror number 2, is that your verdict?

JUROR NUMBER 2: Yes.

THE CLERK: Juror number 3, is that your verdict?

JUROR NUMBER 3: Yes.

THE CLERK: Juror number 4, is that your verdict?

JUROR NUMBER 4: Yes.

THE CLERK: Juror number 5, is that your verdict?

JUROR NUMBER 5: Yes.

THE CLERK: Juror number 6, is that your verdict?

JUROR NUMBER 6: Yes.

THE CLERK: Juror number 7, is that your verdict?

JUROR NUMBER 7: Yes.

THE CLERK: Juror number 8, is that your verdict?

JUROR NUMBER 8: Yes.

THE CLERK: Juror number 9, is that your verdict?

JUROR NUMBER 9: Yes.

THE CLERK: Juror number 10, is that your verdict?

JUROR NUMBER 10: Yes.

THE CLERK: Juror number 11, is that your verdict?

JUROR NUMBER 11: Yes.

THE CLERK: Juror number 12, is that your verdict?

JUROR NUMBER 12: Yes.

THE COURT: All right, I thank you for the time and attention you have given to this case, you see how the process of justice goes and the extension of protection we give to defendants and the extent of work that is involved for all concerned. You are now free to talk about the case. You don't have to answer any questions if you don't wish to, and in any event, you shouldn't talk about your deliberations, how you reached your verdict is a matter on which nobody can inquire. Mr. Giokas has the cards and I think the jurors should report downstairs.

(Whereupon jurors were excused.)

MR. LA ROSSA: Would your Honor extend the time for motions with respect to the verdict until

the day of sentence.

THE COURT: I think we should get presentence reports on all of the defendants and that will mean it will be in early September before they are reached. Any objection to that.

MR. DE PETRIS: No, your Honor.

THE COURT: And can the bail situation remain the same on all defendants.

MR. DE PETRIS: Yes, your Honor.

MR. LA ROSSA: Then our motions are extended.

THE COURT: I assume Mr. Fischetti and Mr. Sparrow and Mr. Krinsky you say the same.

(All attorneys involved answered in the affirmative.)

THE COURT: You vigorously tried on both sides and a very difficult case for Mr. LaVecchia and Mr. Bogin, but I think counsel did all they could. You better get the probation people up here.

MR. DE PETRIS: He's here.

(Whereupon, case on trial was concluded.)

* * * *

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 73 CR 305
	)	
ANTHONY LA VECCHIA	)	

On this 26th day of September, 1974, came the attorney for the government and the defendant appeared in person and with counsel, James La Rossa, Esq.

IT IS ADJUDGED that the defendant, upon a verdict of guilty, has been convicted of the offense of violating T-18, U.S.C., Sec. 371, 472, 473 and 2, in that on or about July 1, 1971, on or about the early and middle of June, 1972, and on or about and between June, 1971 and February 15, 1973, both dates being approximate and inclusive, the defendant with others did conspire with intent to defraud, to possess, conceal, buy, receive, transfer and deliver quantities of counterfeit $10.00 Federal Reserve Notes, and did keep in his possession, conceal and transfer and deliver false, forged and counterfeit

$10.00 Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited, as charged in Counts 1, 2, 7, 8 and 12, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 4 years pursuant to T-18, U.S.C., eligibility for parole after 1 year. Defendant fined $5,000.00 to run concurrent on cts. 1, 2, 7, 8, and 12. Execution of sentence stayed pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Orrin G. Judd
United States District Judge

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 73 CR 305
	)	
EDWARD BOGAN	)	

On this 20th day of September, 1974, came the attorney for the government and the defendant appeared in person and with counsel, R. Fischetti, Esq.

IT IS ADJUDGED that the defendant a verdict of guilty has been convicted of the offense of violating T-18, U.S.C., Sec. 2, 371, 472 and 473 in that on or about the middle of June, 1972 and on or about and between June, 1971 and February 15, 1973, both dates being approximate and inclusive, the defendant, with others, did conspire with intent to defraud, to possess, counceal, buy, receive, transfer, deliver and did transfer and deliver quantities of false, forged and counterfeited $10.00 Federal Reserve Notes, knowing the

same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine, as charged in counts 8 and 12 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 4 years to run concurrently on counts 8 and 12 with eligibility for parole after one year pursuant to T-18, U.S. Code, Sec. 4208(a)(1). Execution of sentence stayed pending appeal. Bail conditions continued.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Orrin G. Judd
United States District Judge

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
v.	)	No. 73 CR 305
	)	
HERBERT KURSHENOFF.	)	

On this 13th day of September, 1974 came the attorney for the government and the defendant appeared in person and with counsel, Barry Krinsky, Esq.

IT IS ADJUDGED that the defendant, upon a verdict of guilty, has been convicted of the offense of violating T-18, U.S.C., Sec. 371, in that on or about and between June, 1971 and February 15, 1973, both dates being approximate and inclusive, the defendant with others, did knowingly and wilfully conspire to commit an offense against the U.S. in violation of T-18, U.S.C., Sec. 472 and 473, by conspiring with intent to defraud to possess, conceal, buy, receive, transfer and deliver substantial quantities of counterfeit $10.00 Federal Reserve Notes, knowing the same to be falsely made, forged and counterfeited and intending them to be passed, published and used as true and genuine, as charged in Count 12, and the

court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized represnetative for imprisonment for a period of 18 months on count 12. Defendant to serve 6 months and balance of sentence is suspended and the defendant is placed on probation for 12 months subject to the standard conditions of probation as set forth in the standing order of this court dated Oct. 13, 1964. Defendant is fined $750.00. Bail conditions continued. Execution of sentence stayed pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Orrin G. Judd
United States District Judge

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
v.) No. 73 CR 305
)
NICHOLAS ANDRIOTIS.)

On this 18th day of October, 1974, came the attorney for the government and the defendant appeared in person and with counsel.

IT IS ADJUDGED that the defendant upon a verdict of guilty, has been convicted of the offense of violating T-18, U.S.C., Sec. 2, 371, 472 and 473 in that on or about late August, 1972, and on or about and between June, 1971 and February 15th, 1973, both dates being approximate and inclusive, the defendant with others did conspire with intent to defraud, to possess, conceal, buy, receive, transfer, deliver and did buy and receive quantities of false forged, and counterfeited $10.00 Federal Reserve Notes, knowing the same to be false, forged and counterfeited, and intending them to be passed, published and used as true and genuine, as charged in Counts

and 12, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one year, the defendant is to serve 4 months and execution of the balance of the sentence is suspended and the defendant is placed on probation for a period of 2 years, the sentence is to run concurrent on counts 11 and 12, and are subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964. Execution of sentence is stayed pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Orrin G. Judd
United States District Judge

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X
UNITED STATES OF AMERICA,

v.

No. 73 CR 305

ANTHONY LA VECCHIA, et al.,

Defendants.
----------X

S I R :

PLEASE TAKE NOTICE that ANTHONY LA VECCHIA hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Orrin G. Judd, United States District Judge for the Eastern District of New York, on September 26th, 1974, wherein the defendant was convicted of one count of violating Title 18, United States Code, Sections 472 and 2, four counts of violating Title 18, United States Code, Sections 473 and 2 and one count of violating Title 18, United States Code, Section 371. The defendant was sentenced upon said conviction to four years imprisonment on each count, the terms to run

concurrently, and further fined in the amount of $5,000.

Dated: New York, New York
September 26th, 1974

Yours, etc.

JAMES M. LA ROSSA
Attorney for Defendant
ANTHONY LA VECCHIA
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
United States Courthouse
225 Cadmand Plaza East
Brooklyn, New York 11201

The defendant's home address is:

161 Bay 31st Street
Brooklyn, New York 11214

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

v.

No. 73 CR 305

EDWARD BOGAN, et al.,

Defendants.

----------X

S I R :

PLEASE TAKE NOTICE that EDWARD BOGAN hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Orrin G. Judd, United States District Judge for the Eastern District of New York, on September 20th, 1974, wherein the defendant was convicted of one count of violating Title 18, United States Code, Sections 473 and 2 and one count of violating Title 18, United States Code, Section 371. The defendant was sentenced upon said conviction to four years imprisonment

on each count, the terms to run concurrently.

Dated: New York, New York
September 20th, 1974

Yours, etc.

RONALD P. FISCHETTI
Attorney for Defendant
EDWARD BOGAN
Office and P.O. Address
522 Fifth Avenue
New York, New York
687-4100

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

The defendant's home address is:

602 Avenue T
Apt. 4J
Brooklyn, New York

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-against-

No. 73 CR 305

HERBERT KURSHENOFF,

Defendant.
----------X

Name and address of Appellant: Herbert Kurshenoff
414 Avenue N
Brooklyn, New York

Name and address of Appellant's attorney: Barry Krinsky
66 Court Street
Brooklyn, New York

Offenses: Conspiracy to Possess and Receive counterfeit money (Title 18, U.S.C. §371)

Verdict: Guilty

Judgment of Conviction: Split Sentence. Eighteen months; Six months imprisonment and the remainder on Probation and a fine of $750. (Judd, J.)

The above named defendant, with counsel assigned under the Criminal Justice Act, hereby appeals to the United States Court of Appeals for the Second Circuit from the above Judgment of September 13, 1974. (Judd, J.)

BARRY KRINSKY, ESQ.
66 Court Street
Brooklyn, New York

Dated: Brooklyn, New York
September 19, 1974

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

-against-

No. 73 CR 305

ANTHONY LA VECCHIA, EDWARD BOGAN, HERBERT KURSHENOFF and NICHOLAS ANDRIOTIS,

Defendants.
----------X

Notice is hereby given that Nicholas Andriotis, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of conviction entered in this action on the 18th day of October, 1974.

Harold B. Foner, Ira Leitel, of counsel

Attorneys for Andriotis
188 Montague Street
Brooklyn, New York 11201
Tel.No.: 624-5775

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U.S. ATTORNEY
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EAST. DIST. N.Y.

Sylvia Morris